

the united States District Court

William F. DAVIS III

Plaintiff

V.

Civil Action NO. 04-209-SLR

Correctional medical Services,
First Correctional medical
nurse Betty Bradley, and
Dr. Benjamin Robinson
Defendants.



motion for Summary Judgment

there is a genuine issue of material fact which requires trial.
Beard v. Whitley County Remc 840 F.2d 405, 410 (7th Cir 1988)
Valley Liquors inc. v. Renfield importers Ltd. 822 F.2d 656, 659, 7th
Cir 1987.

1. A letter from Raphael Williams to Josep R. Bider about my need to repair my ventral hernia.
 2. A letter from Civil Division from Gregory E. Smith about my medical Condition does not require A operation.
 3. A letter from Lois Davis my mother about my medical Condition because in a lot of pain all the time.
 4. Disciplinary report because I ask to see a doctor because I was in a lot of pain all the time.
 5. my medical Report from doctor Thomas mammer findings, Vomiting, Abdominal pains for three month, lost 40 pounds, Sick looking. I was admitted emergently from the doctor office to St. Francis hospital for Surgery.
- I am entitled to Summary Judgment as a matter of law because there is a genuine issue of material fact which requires trial.

Date: 8-17-08

William F Davis III

Statement of CIA.m

①

Violations my eighth Amendment with Cruel And Unusual punishment.
 Delay or denial of Access to medical Attention.

I William F. DAVIS III I AM Showing how First Correctional medical incorporated who is Supervisory personnel with power and duty to ensure adequate medical care is liable under 1983 for breaches of thier legal obligation resulting in Consitutional Violations. First Correctional medical duty to monitor nurse Betty Bradley and Doctor Benjamin Robinson to ensure inmate is getting Adequate medical care before A Serious illnesses happen. nurse Betty Bradley and Doctor Benjamin Robinson displayed deliberate indifference with a culpable state of mind by them ignoring I, William F. DAVIS III face A Substantial risk of serious harm and disregard that risk by failing to take reasonable measures to abate it. the letter from Raphael Williams stated on May 22, 02 I, William F. DAVIS III complained of Abdominal pains. the letter stated from the medical department determined I had two small ventral hernias.

First Correctional medical time period began June 30, 2002 when Correctional medical Services left June 30, 2002.

the letter stated my hernia were easily reducible and were not causing pain who reduce my hernia. I was seen again for pain and it was determined the hernia were not reducible and bowel sounds were decreased.

I, William F. DAVIS III was Admitted to the infirmary and X-ray revealed partial distal small bowel obstruction but request for Admission NO. 13 Stated I had no bowel Obstruction by the X-ray report.

nurse Betty Bradley and Doctor Benjamin Robinson displayed deliberately indifferent they knew from the diagnosis that my hernia was not reducible CAUSING All kinds of Agonizing ^{Pain} did nothing for 4 1/2 months resulting in losing 4-inches of my intestines, finding feces inside of my Abdominal and leaving me with a very hideous and unattractive long Scar on my abdominal.

I call because of the pain 6-10-02. on 6-14-02 I call because of ^② pain and I could not hardly walk and little appetite. on 6-15-02 I call because of pain. on 6-16-02 I call because I was feeling weak and no appetite nauseated and throwing up. I call 6-17-02 to my mother Lois Davis nurse Betty stated I am not going to the hospital. I call my mother and told her I lost a lot of weight because I weighed my self. on 6-20-02 still having pain and medical put me back on the pod.

6-21-02 still having pain on the pod.

6-22-02 still having pain and no appetite.

6-25-02 still having pain lost 20 pounds.

6-26-02 still having pain no appetite, weak and nauseated.

6-28-02 still having pain.

7-7-02 still having pain nausea, no appetite stated I am getting weak and cramps.

7-8-02 stated lost weight from 250 to 232 pounds.

7-9-02 still having no appetite because I am nauseated all the time and stated nobody care about my problem over and over again.

7-29-02 still having pain tylenal 3 not helping.

8-16-02 my mother call Senator Margaret Henry because I was weaker and weaker the pain was so bad I could not stand it no more thank God for Senator Margaret helping me.

Surgeon Doctor Mammen stated if surgery was put off much longer because bacteria in feces was in my abdominal.

^{Defendants}
Request for Admission stated no. 13 on June 20.02 I had no bowel obstruction by the x-ray report lying again.

letter from Civil Division by Gregory E. Smith Deputy Attorney General stated, the medical services provider, based upon the results of diagnostic tests, has determined that your son's present condition does not require an operation.

if infection had developed because misdiagnosis resulting finding ③ feces in my abdominal I would have suffered serious complications or death.

1. Objective evidence: that Condition seriously affect my health or safety. the pain was so bad keeping me from normal activities such as work, exercise, sports and sleep. physically I were injured losing 4-inches of my intestines and feces was in my abdominal and a very hideous and unattractive long scar on my abdominal. psychologically I almost die if infection had developed because feces was in my abdominal. I do not trust doctor or nurse they cover-up and lie. it was bad and a long time in pain for 4 1/2 month. (Barney v. Pulsipher, 143 F.3d 1299, 1311 (10th Cir 1998)).

2. Subjective evidence: Deliberate indifference doctor, Benjamin Robinson and nurse Betty Bradley knew from the diagnosis that my hernia was not reducible causing all kinds of agonizing because they gave my pain pills all the time and did nothing for 4 1/2 months. Farmer v. Brennan, 511 U.S. 825 (1994).
Estelle v. Gamble, 429 U.S. 97, 104, 97, S.Ct. 285 (1976).

► Serious medical need under the Eighth Amendment one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention. Hill v. Dekalb Reg'l Youth, Det. Ctr 40 F.3d 1176, 1187 (11th Cir 1994). Courts usually agree that the medical need must be one that if left unattended poses a substantial risk of serious harm. Taylor v. Adam, 221 F.3d 1254, 1258 (11th Cir 2000).

Brock v. Wright, 315 F.3d 158 (2d Cir. 2003).

I was in a lot of pain all the time because the letter from my mother Lois Davis when I was calling home all the time showing I call because of the pain date-6-2-02. Call again because of the pain 6-4-02 and no appetite could not eat.

Raphael Williams to Joseph R. Bider United States Senator (4)
 Stated, there were no other concerns such as nausea or vomiting and he had positive bowel sounds but, medical record by Doctor Mammen the Surgeon Stated, he has had intermittent vomiting and abdominal pain for the past three months and there was CT Scan done approximately a month ago the showed a near total obstruction of the small bowel. medical trying to cover-up again. At the present time there is no reason to recommend surgery for this condition as there is no clinical need to repair the ventral hernia. but, Doctor the Surgeon Mammen Stated Physical examination when he came to the office revealed a sick looking male. He was admitted emergently from the office to St. Francis hospital.

the Civil law generally calls a person reckless who acts or if the person has a duty to act fails to act in the face of an unjustifiably high risk of harm that is either know or so obvious that it should be known. failed to act despite his knowledge demonstration unusual was bypassed such procedures, policy and custom a culpable state of mind by nurse Betty Bradley and Doctor Benjamin Robinson ignoring know or obvious proof delay requiring immediate emergency treatment when my medical condition got worsened. Deterioration of my health examine the evidence my medical record from St. Francis hospital show my intestines burst and massive fecal in my abdominal protein calorie malnutrition lost 40 pounds of weight, sick looking, four month history of pain, vomiting and abdominal pain for three month, a bowel obstruction for three. When surgery was done I was in an intensive care unit because chronic dehydration. Disciplinary report show I been in a lot of pain because my hernia I want to see a doctor but I was put in solitary confinement to punish me.

I receive substandard medical care by nurse Betty Bradley and Doctor Benjamin Robinson policy and procedure they did not follow the Standards for health Services for jails national Commission on Correctional health Care. ⑤

Policy - is defined a facility official position on a particular issue related to an organization operation.

Procedure - is defined as describing in detail some time in sequence how a Policy is to be carried out.

I did not get Adequate, Appropriate and Sufficient medical Care Standard established by national Commission on Correctional health Care.

the defendant liable as if they had inflicted the pain themselves by give me pain medication to hide the heroin problem making the Symptoms Worst.

Date: 8-17-08

Sincerely, William F Davis III

Grievance Exhaustion

I filed a grievance due being denied medical treatment. I was informed by Mrs. Jean Long was the Supervisory over seer stated a treatment plan would be worked out.

Jones v. Bock, 127 S. Ct 910 (2007). The Supreme Court held that the PLRA exhaustion requirement is an affirmative defense not a pleading requirement. Therefore although exhaustion is necessary, prisoners are not required to specially plead or demonstrate exhaustion in their complaints. *Id.* at 919.

Finally the Court rejected the total exhaustion rule and held that while no unexhausted rule. Claims may be heard under the PLRA. A Court may not dismiss an entire action simply because the complaint includes both exhausted and unexhausted claims.

Id. at 923 the Court rejected the respondent's analogy that the PLRA is similar to the total exhaustion rule in *Habermas Corpus*. The Court found that the PLRA's language does not support total exhaustion stating that as general matter if complaint contains both good and bad claims. the Court proceeds with the good and leaves the bad. *Id.* at 924. (*Bishop v. Lewis*, 6 A.9 412 (1998)).

Date: 8-17-08

William Davis III

United States District Court

William F. DAVIS III

Plaintiffs,

V.

Correctional Medical Services,
First Correctional medical
nurse, Betty Bradley, and
Dr. Benjamin Robinson

Defendants.

Declaration
Lois E. Davis

Civil Action NO. 04-209-SLR

hereby declares:

I Mrs. Lois E. Davis ^{curate} the letter regarding my son, William F. Davis III Medical condition, regarding his hernia and I obtained letters from the Civil Division of New Castle County and Senator Biden's Office, trying to help my sons medical condition

I declare under penalty of perjury that the foregoing is true and correct
Executed at City and State on

Lois E. Davis

2-1-08

I Mrs Lais E. Davis wrote
a letter regarding my son,
William F. Davis III, medical
condition, regarding his perma
and I obtained letters from
the civil division of
New Castle County and
Senator's Biden's office,
trying to help my son's
medical condition

I declare under penalty
of perjury that the
foregoing is true and
correct
Executed at city and
State on

Lais E. Davis

STATE OF DELAWARE
DEPARTMENT OF CORRECTION

⑧

CLASS I X CLASS II _____

DISCIPLINARY REPORT

DR #: 02-0641INMATE NAME: Davis, William INST #: 162762 HOUSING UNIT: 22-08PLACE OF INCIDENT: 22-Pod DATE: 08-02-02 TIME: APPROX 10/8VIOLATION(S): 1.06 Disorderly or Threatening 2.05 Disrespect 2.06 Failure To Obey an order 2.11 off limitsWITNESSES: 1. Schaffer, T. 2. _____ 3. _____

DESCRIPTION OF ALLEGED VIOLATION(S): Inmate Davis, William Spoke with Corporal McMillian about seeing the doctor. Cpl. McMillian told Mr. Davis name and said he will go speak with someone in medical. Five minutes after the Corporal left 22-Pod Mr. Davis became irate demanding for C/S Schaffer to call a CODE 4 because he need to see the doctor Mr Davis started yelling yall Motherfuckers don't give a fuck I have to die in this motherfucker Mr. Davis then reach on the panel grab the papers and envelopes and throw them on the Pod. A direct Order was given to lock-in Mr. Davis continue pacing in front of the C/S desk. Called Secondary to notify them of the situation A CODE 6 was called.

I WAS in a lot of pain because of my Hernia Staff put me in Solitary Confinement is for punishment

T. Schaffer
REPORTING STAFF'S SIGNATURE

DISPOSITION OF INMATE: ☒ PRE-HEARING DETENTION () CURRENT STATUSREASON: Threat To STAFF & SecurityDATE: 8-2-02 TIME: 1330 CELL SECURED ☒ YES () NO

DISPOSITION OF EVIDENCE: _____

X [Signature]
WATCH COMMANDER'S SIGNATURE

I have received a copy of this notice on DATE: _____ TIME: _____, and have been informed of my rights to have a hearing and be present at the hearing and present evidence on my own behalf.

I understand, if found guilty, I will be subject to imposition of sanctions outlined in the Rules of Conduct.

[Signature]
REVIEWER

X [Signature]
INMATE'S SIGNATURE



A

M. JANE BRADY
ATTORNEY GENERAL

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

NEW CASTLE COUNTY
Carvel State Building
820 N. French Street
Wilmington, DE 19801
Criminal Division (302) 577-8500
Fax: (302) 577-2496
Civil Division (302) 577-8400
Fax: (302) 577-6630
TTY: (302) 577-5783

KENT COUNTY
102 West Water Street
Dover, DE 19901
Criminal Division (302) 739-4211
Fax: (302) 739-6727
Civil Division (302) 739-7641
Fax: (302) 739-7652
TTY: (302) 739-1545

SUSSEX COUNTY
114 E. Market Street
Georgetown, DE 19947
(302) 856-5352
Fax: (302) 856-5369
TTY: (302) 856-4698

PLEASE REPLY TO : *Civil Division – New Castle County*

July 8, 2002

Lois Davis
102 South Heald Street
Wilmington, Delaware 19801

re: William F. Davis, III
SBI # 00162762

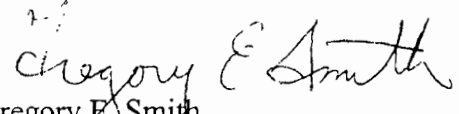
Exhibit "B"

Dear Ms. Davis:

Please accept this letter in response to your phone call of July 8, 2002 regarding your son and his complaints about the medical care that he receives at the Multi-Purpose Criminal Justice Facility.

As you may be aware, your son is presently housed in the infirmary at the MPCJF as a result of his complaints about his health. The medical services provider, based upon the results of diagnostic tests, has determined that your son's present condition does not require an operation. While your son may believe that he is entitled to additional medical care, his condition is being taken seriously and treated appropriately.

Sincerely,


Gregory E. Smith
Deputy Attorney General



STATE OF DELAWARE
DEPARTMENT OF CORRECTION
MULTI-PURPOSE CRIMINAL JUSTICE FACILITY
1301 EAST 12TH STREET
WILMINGTON, DELAWARE 19809
Telephone: (302) 429-7747
Fax: (302) 429-7716

Exhibit

Raphael Williams
Warden IV

July 15, 2002

Joseph R. Biden, Jr.
United States Senator
1105 N. Market Street
Suite 2000
Wilmington, DE 19801

SUBJ: WILLIAM DAVIS (SBI #162762)

Dear Senator Biden:

This letter is written in response to your letter dated July 2, 2002, concerning offender William Davis.

On May 22, 2002, offender Davis complained of abdominal pain and was seen in the medical department. That unit determined he had two small ventral hernias. At that time, he refused to have them reduced and was given pain medicine and an abdominal binder was ordered for him to wear. He was seen again on May 23 and the hernias were easily reducible and were not causing pain. On June 6, he was seen again for pain and it was determined the hernias were not reducible and bowel sounds were decreased. He was admitted to the infirmary and an x-ray revealed a partial distal small bowel obstruction. He remained in the infirmary and was placed on a liquid diet, stool softener and pain medicine. By June 12 his abdomen was soft and non-tender. On June 13, his diet was increased and his symptoms had resolved, but he was still taking pain medicine. There were no other concerns, such as, nausea or vomiting and he had positive bowel sounds. An x-ray revealed that the partial obstruction had resolved. A follow-up appointment on July 3 indicated complaints of discomfort and he was issued Tagamet. There is no significant weight loss. Upon admission (2/10/00) he weighed 250 pounds and on July 3 he weighed 240 pounds. His weight has fluctuated between 256 and 240 pounds during this incarceration.

At the present time there is no reason to recommend surgery for this condition, as there is no clinical need to repair the ventral hernia.

781 F.Supp. 566

781 F.Supp. 566

(Cite as: 781 F.Supp. 566)

Page 2

Summ and
Judgment

with deliberate indifference to his medical needs in connection with treatment of his skin, stomach, and cholesterol problems. U.S.C.A. Const.Amend. 8; 42 U.S.C.A. § 1983.

*567 Fabio Diaz, pro se.

Michael A. Schoening, Deputy Atty. Gen., Indianapolis, Ind., for defendants.

MEMORANDUM AND ORDER

ALLEN SHARP, Chief Judge.

On December 22, 1987, plaintiff *pro se*, Fabio Diaz, an inmate at the Westville Correctional Center, filed a complaint purporting to state a claim under 42 U.S.C. § 1983, and invoking this court's jurisdiction under 28 U.S.C. §§ 1331, 1343(a)(3) and (4).

On October 31, 1991, the Honorable Robin D. Pierce, United States Magistrate Judge, entered a Report and Recommendation, which this court has now carefully and fully examined. The plaintiff, Fabio Diaz, filed written notice of objection to that Report and Recommendation on November 8, 1991, with extensive and elaborate attachments, which basically restate his assertions.

It is all too apparent that deliberate indifference is not a static concept but an evolutionary one, even at this level of the federal judiciary. See Felders v. Miller, 776 F.Supp. 424 (N.D.Ind.1991); Wolf v. Napier, 742 F.Supp. 1014 (N.D.Ind.1990); Gorman v. Moody, 710 F.Supp. 1256 (N.D.Ind.1989), and Cameron v. Metcuz, 705 F.Supp. 454 (N.D.Ind.1989).

It is to be assumed that Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) must be reexamined under Wilson v. Seiter, 501 U.S. 294, 111 S.Ct. 2321, 115 L.Ed.2d 271 (1991) and such cases as Richardson v. Penfold, 839 F.2d 392 (7th Cir.1988), which are modified by McGill v. Duckworth, 944 F.2d 344 (7th Cir.1991) and Steading v. Thompson, 941 F.2d 498 (7th Cir.1991).

Magistrate Judge Pierce has ably defined the current status of the law in this regard in his Report and Recommendation, and *568 such is worthy of

publication. Said Report and Recommendation is ADOPTED. The defendants' motion for summary judgment is GRANTED and plaintiff's motion for summary judgment is DENIED as to all Eighth Amendment claims. Each party will bear its own costs. The Clerk shall enter judgment. IT IS SO ORDERED.

REPORT AND RECOMMENDATION

ROBIN D. PIERCE, United States Magistrate Judge.

This cause is presently before the court on defendants' motions for summary judgment filed on January 24, 1988 and June 27, 1990, as well as the plaintiff's motion for summary judgment filed on July 11, 1989.

► Summary Judgment Standard

[1] Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). A party seeking summary judgment bears the initial responsibility of informing the court of the basis for the motion, and identifying "those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact.'" Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). However, once a properly supported motion for summary judgment is made, the party that bears the burden of proof on a particular issue at trial cannot resist the motion by merely resting on its pleadings. U.S. v. Lair, 854 F.2d 233, 235 (7th Cir.1988). Rather, the party opposing the motion must "affirmatively demonstrate, by specific factual allegations, that there is a genuine issue of material fact which requires trial." Beard v. Whitley County REMC, 840 F.2d 405, 410 (7th Cir.1988); Valley Liquors, Inc. v. Renfield Importers, Ltd., 822 F.2d 656, 659 (7th Cir.1987). "A genuine issue for trial only exists when there is sufficient evidence favoring the nonmovant for a jury

781 F.Supp. 566

Page 3

781 F.Supp. 566

(Cite as: 781 F.Supp. 566)

Summary Judgment

to return a verdict for that party.” *Celotex Corp. v. Catrett*, 106 S.Ct. at 2553. “Summary judgment is properly entered in favor of a party when the opposing party is unable to make a showing sufficient to prove an essential element of a case on which the opposing party bears the burden of proof.” *Common v. Williams*, 859 F.2d 467 (7th Cir.1988). “If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986); *Flip Side Productions, Inc. v. Jam Productions, Ltd.*, 843 F.2d 1024, 1032 (7th Cir.1988). The inquiry involved in ruling on a motion for summary judgment implicates the substantive evidentiary standard of proof, for example, preponderance of the evidence, that would apply at trial. *Anderson*, 106 S.Ct. at 2512. All factual inferences must be drawn in favor of the non-moving party. *Valley Liquors*, 822 F.2d at 659.

The defendants' submission in support of their June 27, 1990 summary judgment motion satisfies their burden under *Rule 56*. The plaintiff has not met his burden of presenting specific facts to show that there is a genuine issue of material fact. Further, the plaintiff has not shown that there is sufficient evidence in his favor so that a jury could return a verdict in his favor. Finally, the plaintiff's submissions in support of his own motion for summary judgment have not satisfied his burden under *Rule 56*. Accordingly, the record before the court shows no genuine issue of material fact and that the defendants are entitled to judgment as a matter of law. For the foregoing reasons, the court now recommends that the defendants' motion for summary judgment be granted, and the plaintiff's motion for summary judgment denied.

Procedural Background

Plaintiff Fabio Diaz, an inmate at Westville Correctional Center (“WCC”) in Westville,*569 Indiana, filed a pro se complaint in this cause on December 22, 1987, pursuant to 42 U.S.C. § 1983. His original complaint alleges that defendants G. Michael Broglin, Kurt Plescher, and Anthony Metzcus

provided inadequate treatment of a serious skin disorder. Mr. Diaz claims that he was denied access to a dermatologist and denied medication from September through October, 1987, and that these denials constituted cruel and unusual punishment under the Eighth Amendment.

On December 24, 1987, Mr. Diaz filed a motion for temporary restraining order and preliminary injunction which the court subsequently denied. The defendants responded to Mr. Diaz's complaint by denying all of the allegations contained therein and filing a motion to dismiss on January 22, 1988. On February 24, 1988, the court converted this motion to a motion for summary judgment. The defendants subsequently submitted documentation specifically addressing the allegations contained in Mr. Diaz's complaint. He filed his response to defendants' motion for summary judgment on March 8, 1988. This matter is still pending before the court. In an order dated June 6, 1988, the court dismissed all claims against defendants Broglin, Plescher, and Metzcus in their official capacities.

Mr. Diaz filed his own motion for summary judgment on July 13, 1989. On July 28, 1989, he filed a motion for leave to file a supplemental complaint, and on August 7, 1989 the court granted this motion. This supplemental complaint, which was filed on August 7, 1989, named two additional defendants who were initially identified as “Joan Doer.” Mr. Diaz alleged that these defendants were nurses who had refused to see him about a stomach problem. He claimed that the nurses' conduct constituted deliberate indifference to his serious medical needs, and was thus in violation of the Eighth Amendment. On December 29, 1989, he filed a request for service of summons substituting Dawn Kortman and Caroline Schumaker for the “Joan Doer” identified in the August 7 complaint.

Mr. Diaz subsequently failed to perfect service on defendants Kortman and Schumaker. When he served Kortman and Schumaker on January 9, 1990, Mr. Diaz made no attempt to serve the supplemental complaint on defendants' counsel. On February 16, 1990, Mr. Diaz obtained an entry of

40 F.3d 1176

40 F.3d 1176

(Cite as: 40 F.3d 1176)

Page 16

“contextual and responsive to ‘contemporary standards of decency.’ ” *Hudson v. McMillian*, 503 U.S. 1, ---, 112 S.Ct. 995, 1000, 117 L.Ed.2d 156 (1992) (quoting *Estelle*, 429 U.S. at 103, 97 S.Ct. at 290). Regarding the subjective component, “[t]his court has consistently held that knowledge of the need for medical care and intentional refusal to provide that care constitute deliberate indifference.” *Mandel v. Doe*, 888 F.2d 783, 788 (11th Cir.1989). To analyze Swain’s responsive conduct upon learning of blood in Hill’s underwear, we first must evaluate “whether there was evidence of a serious medical need” to determine if the four-hour delay in acquiring medical attention was unwarranted, such that it “amounted to deliberate indifference.” *Id.* (citing *West v. Keve*, 571 F.2d 158, 161 (3d Cir.1978) (recognizing that the “deliberate indifference” standard is “two-pronged,” consisting of deliberate indifference by prison officials in response to a prisoner’s “serious” medical needs)).

► a. Serious Medical Needs and Treatment Delay

[13][14] “Because society does not expect that prisoners will have unqualified access to health care, deliberate indifference to medical needs amounts to an Eighth Amendment violation only if those needs are ‘serious.’ ” *Hudson*, 503 U.S. at ---, 112 S.Ct. at 1000. In *Estelle*, the Court recognized that medical needs constitutionally requiring medical attention ranged from “the worst cases,” producing “physical torture or a lingering death,” to “less serious cases,” resulting from the “denial of medical care,” which could cause “pain and suffering.” *1187 *Estelle*, 429 U.S. at 103, 97 S.Ct. at 290. In 1987, when Hill’s alleged medical mistreatment occurred, a federal court had determined that “[a] ‘serious’ medical need is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor’s attention.” *Laaman v. Helgemoe*, 437 F.Supp. 269, 311 (D.N.H.1977). This standard has been acknowledged and used by other federal circuit and district courts. See, e.g., *Gaudreault v. Municipality of*

Salem, 923 F.2d 203, 208 (1st Cir.1990) (per curiam), cert. denied, 500 U.S. 956, 111 S.Ct. 2266, 114 L.Ed.2d 718 (1991); *Monmouth County Correctional Institutional Inmates v. Lanzaro*, 834 F.2d 326, 347 (3d Cir.1987), cert. denied, 486 U.S. 1006, 108 S.Ct. 1731, 100 L.Ed.2d 195 (1988); *Ramos v. Lamm*, 639 F.2d 559, 575 (10th Cir.1980), cert. denied, 450 U.S. 1041, 101 S.Ct. 1759, 68 L.Ed.2d 239 (1981); *Casey v. Lewis*, 834 F.Supp. 1477, 1543 n. 1 (D.Ariz.1993); *Hare v. City of Corinth*, 814 F.Supp. 1312, 1321 (N.D.Miss.1993); *Johnson v. Vondera*, 790 F.Supp. 898, 900 (E.D.Mo.1992). Not only was the *Laaman* standard established for a decade at the time that Swain allegedly violated Hill’s Eighth Amendment rights, but also we believe it to be the appropriate and guiding principle by which to gauge “serious medical needs” of prisoners.

Both aspects of the *Laaman* test are pertinent to the Hills’ claim of delay in appropriate medical treatment by Swain. The previous day, a doctor at Grady Memorial Hospital had diagnosed Hill’s medical complaints as a gastrointestinal condition for which he had prescribed medication. Swain personally had administered this medicine to Hill and monitored him closely for this *diagnosed* medical problem. Thus, the mandated treatment for his diagnosed ailment undisputedly was received by Hill. Cf. *Aldridge v. Montgomery*, 753 F.2d 970, 972-73 (11th Cir.1985) (per curiam) (holding that a state prisoner demonstrated a triable issue of fact when he presented evidence that a deputy failed to administer an ice pack and pain medication as instructed by attending doctor after suturing a wound).

Because Swain was a layperson and not a physician, we also examine her response and reaction to learning of blood in Hill’s underwear to determine if “a lay person would easily recognize the necessity for a doctor’s attention” under those circumstances. *Laaman*, 437 F.Supp. at 311. Clearly, Swain did recognize the need for a physician’s attention because she contacted Hill’s mother to see if he had insurance so that he could be taken to

40 F.3d 1176

40 F.3d 1176

(Cite as: 40 F.3d 1176)

Page 17

Dekalb General Hospital. The Hills, however, complain that the four-hour delay in Hill's transportation to the hospital, the cause of which was occasioned by Swain's overseeing the serving of dinner to the DRYDC inmates, was unwarranted. Consequently, we must review Swain's response upon learning of blood in Hill's underwear to determine if his medical condition required immediate or emergency attention.

[15][16] Delay in access to medical attention can violate the Eighth Amendment, *Estelle*, 429 U.S. at 104-05, 97 S.Ct. at 291, when it is "tantamount to 'unnecessary and wanton infliction of pain,'" *Brown v. Hughes*, 894 F.2d 1533, 1537 (11th Cir.) (per curiam) (quoting *Estelle*, 429 U.S. at 104, 97 S.Ct. at 291), *cert. denied*, 496 U.S. 928, 110 S.Ct. 2624, 110 L.Ed.2d 645 (1990). Cases stating a constitutional claim for immediate or emergency medical attention have concerned medical needs that are obvious even to a layperson because they involve life-threatening conditions or situations where it is apparent that delay would detrimentally exacerbate the medical problem.^{FN21} In contrast, delay or *1188 even denial of medical treatment for superficial, nonserious physical conditions does not constitute an Eighth Amendment violation.^{FN22}

► FN21. See, e.g., *Brown*, 894 F.2d at 1538 (six-hour delay in medical treatment for "a serious and painful broken foot was sufficient to state a constitutional claim"); *Thomas v. Town of Davie*, 847 F.2d 771, 772 (11th Cir.1988) (automobile accident where the individual was " 'in obvious need of immediate medical attention,' " because of his " 'medically emergent and deteriorating ... condition' "); *H.C. ex rel. Hewett v. Jarrard*, 786 F.2d 1080, 1086-87 (11th Cir.1986) (three-day delay in medical treatment for shoulder injury was " 'reckless disregard' " for detainee's serious medical need and was a constitutional violation); *Ancuta v. Prison Health Servs., Inc.*, 769 F.2d 700, 702 (11th Cir.1985)

(valid constitutional claim where inmate died of leukemia four months after complaining of "serious" medical problems, including swollen ankles, inability to sleep, chills, hyperventilation, severe pain in back and right leg, and double vision, and county jail defendants made no arrangements for a doctor's examination until compelled to do so by two court orders); *Aldridge*, 753 F.2d at 972 (one-and-a-half-inch cut over detainee's eye bleeding for two and a half hours before sutured at a hospital); *Hughes v. Noble*, 295 F.2d 495, 496 (5th Cir.1961) (per curiam) (following automobile accident, individual jailed for thirteen hours with broken neck and forced to endure "severe pain" despite "repeated requests for medical attention"); see also *Cooper v. Dyke*, 814 F.2d 941, 945-46 (4th Cir.1987) (detainee's gunshot wound required immediate medical attention and delay in providing it caused shock and extensive internal bleeding).

FN22. See, e.g., *Shabazz v. Barnauskas*, 790 F.2d 1536, 1538 (11th Cir.) (per curiam) (state inmate's " 'pseudofolliculitis' or 'shaving bumps,' " even if shaving required by prison officials when physician ordered otherwise, "does not rise to the level of the cruel and unusual punishment forbidden by the Eighth Amendment"), *cert. denied*, 479 U.S. 1011, 107 S.Ct. 655, 93 L.Ed.2d 709 (1986); *Dickson v. Coleman*, 569 F.2d 1310, 1311 (5th Cir.) (per curiam) (county inmate's high blood pressure presented " 'no true danger' or 'serious threat' to his health," and he also had full range of motion in his shoulder despite continuing pain from a three-year-old injury; further, he obtained a medical examination the day after he requested it), *cert. denied*, 439 U.S. 897, 99 S.Ct. 259, 58 L.Ed.2d 244 (1978); see also

40 F.3d 1176

40 F.3d 1176

(Cite as: 40 F.3d 1176)

Page 21

plaining how the four-hour delay in taking Hill to the hospital detrimented or worsened his medical condition. The record does not indicate what, if any, treatment was provided by the examining doctor or if medication was prescribed. Discovery of sexual assault is different from medical treatment or the need for medical attention. The Hills make a bare, unsupported assertion that “[i]t is rather common knowledge that *any* delay following a sexual assault will cloud the forensic waters.” Appellees’ Brief at 33 (emphasis added). Without medical evidence contrariwise, we are unpersuaded that the four-hour delay in transporting Hill to a hospital was more detrimental for forensic purposes than the approximate twelve-hour delay following the sexual assault caused by Hill’s silence.^{FN27} When Hill was asked at his deposition if Swain did anything that prevented him from receiving the medical care that he needed, he responded “No.” Deposition of Mark Anthony Hill at 111. Consequently, the objective facts in this case do not demonstrate that Hill had a “serious” medical need requiring immediate medical attention, that the four-hour delay in transporting him to a hospital was unreasonable, or that this delay exacerbated Hill’s medical condition.

FN27. Additionally, we are unconvinced that the Eighth Amendment in the context of medical needs applies to forensic testing as opposed to physical condition. The Hills have provided no authority for the proposition that the preservation of evidence constitutes a serious medical need, and we have found none.

► b. Determination of Deliberate Indifference

[21] Having reviewed the relation between a serious medical need and treatment delay, we are in a position to assess Swain’s subjective or cognitive response upon learning of blood in Hill’s underwear and the consequent four-hour delay in transporting him to a hospital to determine if this amounted to deliberate indifference to his sexual assault. In *1191Whitley v. Albers, 475 U.S. 312, 106 S.Ct. 1078, 89 L.Ed.2d 251 (1986), a case concerning a

state prisoner who was shot by a prison official quelling a riot, the Court held that “[i]t is obduracy and wantonness, not inadvertence or error in good faith” that violates the Eighth Amendment in “supplying medical needs.”^{FN28} *Id.* at 319, 106 S.Ct. at 1084. “A defendant must *purposefully ignore or fail to respond* to a prisoner’s pain or possible medical need in order for deliberate indifference to be established.” *McGuckin v. Smith*, 974 F.2d 1050, 1060 (9th Cir.1992) (emphasis added). Implicit in the *Estelle* deliberate indifference standard is *knowledge* of the *particular medical condition* in order to establish intent or “a sufficiently culpable state of mind,” *Wilson*, 501 U.S. at 298, 111 S.Ct. at 2324, *to deny or to delay purposely* “access to medical care” or intentionally to interfere “with the treatment once prescribed,” *Estelle*, 429 U.S. at 104-05, 97 S.Ct. at 291. Thus, “[k]nowledge of the asserted serious needs or of circumstances clearly indicating the existence of such needs, is *essential* to a finding of deliberate indifference.”^{FN29} *Horn ex rel. Parks v. Madison County Fiscal Court*, 22 F.3d 653, 660 (6th Cir.) (emphasis added), *cert. denied*, 513 U.S. 873, 115 S.Ct. 199, 130 L.Ed.2d 130 (1994); *see Mandel v. Doe*, 888 F.2d 783, 788 (11th Cir.1989).

FN28. We are cognizant that the Supreme Court now has defined “deliberate indifference” as requiring more than negligence, but less than conduct undertaken to cause harm. *Farmer v. Brennan*, 511 U.S. 825, ---, 114 S.Ct. 1970, 1978, 128 L.Ed.2d 811 (1994). The Court has adopted a “subjective recklessness” standard from criminal law so that a prison official is not deliberately indifferent unless the individual “knows of and disregards an excessive risk to inmate health and safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Id.* at 1979, 114 S.Ct. at 1979. We do not base our analysis of this case on this new stand-

40 F.3d 1176

Page 22

40 F.3d 1176

(Cite as: 40 F.3d 1176)

ard because it was not the law in 1987, when Swain's challenged conduct occurred. *See Lassiter*, 28 F.3d at 1150. Further, *Farmer* specifically concerns prison safety rather than inmates' medical needs.

FN29. *See Wilson*, 501 U.S. at 299-301, 111 S.Ct. at 2325 ("The long duration of a cruel prison condition may make it easier to *establish* knowledge and hence some form of intent..."); *Harris*, 21 F.3d at 394 ("[D]eliberate indifference could be inferred from an unexplained delay in treating a *known or obvious* serious medical condition."); *see also Brown*, 894 F.2d at 1539 (affirming summary judgment for state prison officials because there was no evidence that they were aware that inmate had broken his foot on the day that it occurred and sending him to a hospital upon knowledge of this fact precluded finding deliberate indifference); *Loe v. Armistead*, 582 F.2d 1291, 1292, 1296 (4th Cir.1978) (prison officials who delayed twenty-two hours in obtaining doctor's care for inmate's obviously broken arm showed deliberate indifference because the arm was swollen, "locked in an extraordinary position" and it was an "excruciating injury"), *cert. denied*, 446 U.S. 928, 100 S.Ct. 1865, 64 L.Ed.2d 281 (1980).

[22] In this case, Swain *did not know* that Hill had been sexually assaulted when the guard reported to her that there was blood in his underwear.^{FN30} She had no reason to suspect such an occurrence from his behavior, in the context of his gastrointestinal problems and stomach-ache complaints for which he was being treated, or the conduct of DRYDC personnel. Indeed, Hill did not disclose the sexual assault until he was examined by a doctor at Dekalb General Hospital on the evening of August 7, 1987. The district court apparently was persuaded by the Hills' arguments that blood in underwear is evidence of sexual abuse, and that Swain's training from

a course in recognizing sexual assault should have alerted her to this fact. The Supreme Court does not consider physicians who are negligent in diagnosing or treating a medical condition to be in violation of the Eighth Amendment. *Estelle*, 429 U.S. at 106, 97 S.Ct. at 292. Swain, a layperson, clearly cannot be held to a higher standard merely because she had a course in sexual abuse.

FN30. *Cf. Love v. Sheffield*, 777 F.2d 1453, 1454-55 (11th Cir.1985) (per curiam) (a reasonable person could find that there was awareness both of danger and need for medical treatment, yet a choice not to supply protection and medical assistance when county sheriff refused to provide medical care for detainee whom he confined with violent prisoners, who assaulted and injured detainee).

Significantly, Swain did not exhibit the wanton mental state for an Eighth Amendment violation. To the contrary, she had given Hill extraordinary care and medical attention. She was so concerned about his medical condition that she had remained at *1192 the DRYDC from 11:00 P.M. on August 6, 1987, after the end of her shift, until approximately 5:00 A.M. the next morning, waiting for Hill to return from Grady Memorial Hospital. Upon his return at 4:20 A.M., she still stayed to give him his supper that she had saved for him, administered his prescription medication, and ordered that he be allowed to sleep late that morning because of his lack of sleep the night before. She checked on him upon her arrival at the DRYDC at 3:00 P.M. on August 7, 1987, administered his medicine when he told her that his stomach still hurt, did not leave his cell until he told her that he felt better, personally monitored him regularly, and requested that the guards check on him every fifteen minutes. She also informed him that he would have further medical attention if his problems continued. When advised of blood in Hill's underwear, she took appropriate measures under the *known* circumstances, as we have analyzed.

JTVCC James T. Vaughn Correctional Center
 Smyrna Landing Road
 SMYRNA DE, 19977
 Phone No. 302-653-9261

Date: 07/16/2008

GRIEVANCE REPORT

OFFENDER GRIEVANCE INFORMATION

Offender Name : DAVIS, WILLIAM F 3	SBI# : 00162762	Institution : JTVCC
Grievance # : 159078	Grievance Date : 05/12/2008	Category : Individual
Status : Resolved	Resolution Status : Level 2	Resol. Date : 07/16/2008
Grievance Type: Health Issue (Medical)	Incident Date : 05/12/2008	Incident Time : 12:00
IGC : Merson, Lise M	Housing Location : Bldg T2, Cell 1, Bed 47	

OFFENDER GRIEVANCE DETAILS

Description of Complaint: Inmate Claims: I was told that a treatment plan would be work out by Jean Long who was the supervisory over seer when I had a hernia in Gander Hill Prison May 22, 02. i am having abdominal pain again. i want all copies my medical grievances when I was at Gander Hill Prison in Wilm. Del. starting April 01,02 to Sept 30, 02. I want to know if I had all of my grievance hearing.

Remedy Requested : Inmate Action Requested: Where is my treatment plan by Jean Long for my hernia.

INDIVIDUALS INVOLVED

Type	SBI #	Name

ADDITIONAL GRIEVANCE INFORMATION

Medical Grievance : YES	Date Received by Medical Unit : 05/21/2008
Investigation Sent : 05/21/2008	Investigation Sent To : Moore, Ronnie
Grievance Amount :	

JTVCC James T. Vaughn Correctional Center
Smyrna Landing Road
SMYRNA DE, 19977
Phone No. 302-653-9261

Date: 07/16/2008

INFORMAL RESOLUTION**OFFENDER GRIEVANCE INFORMATION**

Offender Name : DAVIS, WILLIAM F 3	SBI# : 00162762	Institution : JTVCC
Grievance # : 159078	Grievance Date : 05/12/2008	Category : Individual
Status : Resolved	Resolution Status: Level 2	Inmate Status :
Grievance Type: Health Issue (Medical)	Incident Date : 05/12/2008	Incident Time : 12:00
IGC : Merson, Lise M	Housing Location :Bldg T2, Cell 1, Bed 47	

INFORMAL RESOLUTION

Investigator Name : Moore, Ronnie Date of Report 05/21/2008

Investigation Report : 6/7/08-Im request grievances from 2002 while incarcerated at Gander Hill; refused to sign off; IM
(request next level

Reason for Referring:

Offender's Signature: _____

Date : _____

Witness (Officer) : _____

JTVCC James T. Vaughn Correctional Center
 Smyrna Landing Road
 SMYRNA DE, 19977
 Phone No. 302-653-9261

Date: 07/16/2008

GRIEVANCE INFORMATION - IGC

OFFENDER GRIEVANCE INFORMATION

Offender Name : DAVIS, WILLIAM F 3	SBI# : 00162762	Institution : JTVCC
Grievance # : 159078	Grievance Date : 05/12/2008	Category : Individual
Status : Resolved	Resolution Status : Level 2	Inmate Status :
Grievance Type : Health Issue (Medical)	Incident Date : 05/12/2008	Incident Time : 12:00
IGC : Merson, Lise M	Housing Location : Bldg T2, Cell 1, Bed 47	

IGC

Medical Provider:

Date Assigned

Comments:

<input checked="" type="checkbox"/> Forward to MGC	<input type="checkbox"/> Forward to Medical Provider	<input type="checkbox"/> Warden Notified
<input type="checkbox"/> Forward to RGC	Date Forwarded to MGC :	
<input checked="" type="checkbox"/> Offender Signature Captured	Date Offender Signed	: 07/16/2008

JTVCC James T. Vaughn Correctional Center
 Smyrna Landing Road
 SMYRNA DE, 19977
 Phone No. 302-653-9261

Date: 07/16/2008

GRIEVANCE INFORMATION - MGC**OFFENDER GRIEVANCE INFORMATION**

Offender Name : DAVIS, WILLIAM F 3	SBI# : 00162762	Institution : JTVCC
Grievance # : 159078	Grievance Date : 05/12/2008	Category : Individual
Status : Resolved	Resolution Status: Level 2	Inmate Status :
Grievance Type: Health Issue (Medical)	Incident Date : 05/12/2008	Incident Time : 12:00
IGC : Merson, Lise M	Housing Location : Bldg T2, Cell 1, Bed 47	

MGC**Date Received :** 06/24/2008**Date of Recommendation:** 07/16/2008**GRIEVANCE COMMITTEE MEMBERS**

Person Type	SBI #	Name	Vote
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VOTE COUNT**Uphold :****Deny :****Abstain :****TIE BREAKER**

Person Type	SBI #	Name	Vote
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RECOMMENDATION

Hearing held 7/16/08: Inmate signed off as resolved.

PRISONERS' SELF-HELP LITIGATION MANUAL

E. Clothing

Prisoners are entitled to clothing that is "at least minimally adequate for the conditions under which they are confined."¹⁵⁴ They are entitled to clothing that is clean or to have an opportunity to clean it themselves,¹⁵⁵ and to enough clothing that they have something to wear while one change of clothing is being washed.¹⁵⁶ Clothing that fits badly or does not look good generally does not violate the Constitution.¹⁵⁷ Prison officials may limit the amount of clothing an inmate possesses.¹⁵⁸

Prisoners are not entitled to their choice of clothing, and even pre-trial detainees may be required to wear uniforms.¹⁵⁹ However, persons on trial in criminal courts are entitled to wear civilian clothes and not jail uni-

¹⁵⁴ *Knop v. Johnson*, 667 F.Supp. 467, 475-77 (W.D.Mich. 1987) (jackets found inadequate for Michigan winters; hats, gloves or mittens, and boots or heavy socks also required); *aff'd in pertinent part*, 977 F.2d 996, 1012 (6th Cir. 1992), *cert. denied*, 113 S.Ct. 1415 (1993).

¹⁵⁵ *accord*, *Gordon v. Faber*, 973 F.2d 686, 687-88 (8th Cir. 1992) (denial of hats and gloves in sub-freezing weather violated the Eighth Amendment); *Williams v. Griffin*, 952 F.2d 820, 825 (4th Cir. 1991) (allegation of deprivation of coats supported an Eighth Amendment claim); *Balla v. Idaho State Bd. of Corrections*, 595 F.Supp. 1558, 1575 (D.Idaho 1984) (inmates given lightweight uniforms must also get insulated underwear); *see also Hernandez v. Denton*, 861 F.2d 1421, 1423-24 (9th Cir. 1988) (month-long deprivation of shoes could violate the Eighth Amendment), *vacated on other grounds*, 110 S.Ct. 37 (1989). *But see Pendergrass v. Hannigan*, 788 F.Supp. 488, 489 (D.Kan. 1992) (claim of denial of winter clothing rejected on facts); *Kendrick v. Bland*, 659 F.Supp. 1188, 1196 (W.D.Ky. 1987) (raincoats and undershirts not constitutionally required), *aff'd sub non*. *Thompson v. Bland*, 843 F.2d 1392 and *Smith v. Bland*, 856 F.2d 196 (6th Cir. 1988).

¹⁵⁶ *Divers v. Dept. of Corrections*, 921 F.2d 191, 194 (8th Cir. 1990) ("adequate laundry facilities" required); *Howard v. Adkison*, 887 F.2d 134, 137 (8th Cir. 1989); *Reece v. Gragg*, 650 F.Supp. 1297, 1305 (D.Kan. 1986); *Martino v. Carey*, 563 F.Supp. 984, 1000 (D.Or. 1983); *Toussaint v. Rushen*, 553 F.Supp. 1365, 1371, 1379, 1385 (N.D.Cal. 1983) (lack of regular laundry service unconstitutional), *aff'd in part and vacated in part on other grounds*, 722 F.2d 1490 (9th Cir. 1984); *Dawson v. Kendrick*, 527 F.Supp. 1252, 1288 (S.D.W.Va. 1981); *Rutherford v. Pitchess*, 457 F.Supp. 104, 116-17 (S.D.Cal. 1978), *aff'd in part and rev'd in part on other grounds*, 710 F.2d 572 (9th Cir. 1983), *rev'd on other grounds*, 468 U.S. 589 (1984); *Hickson v. Kellison*, 170 W.Va. 732, 296 S.E.2d 855, 858 (W.Va. 1982). *But see State v. Rouse*, 229 Kan. 600, 629 P.2d 167, 172 (Kan. 1981) (two-week deprivation of clean clothing was not unconstitutional).

¹⁵⁷ Prisoners may be required to do their own laundry. *Green v. Ferrell*, 801 F.2d 765, 771 (5th Cir. 1986); *Shelby County Jail Inmates v. Westlake*, 798 F.2d 1085, 1091 (7th Cir. 1986).

¹⁵⁸ *Hazen v. Pasley*, 768 F.2d 226, 228 n.2 (8th Cir. 1985); *Evans v. Headley*, 566 F.Supp. 1133, 1138 (S.D.N.Y. 1983); *see also Hickson v. Kellison*, 296 S.E.2d at 858 (failure to provide clothing other than what the prisoner was wearing when arrested is unconstitutional).

¹⁵⁹ *Knop v. Johnson*, 667 F.Supp. at 475.

¹⁶⁰ *Rust v. Grammer*, 858 F.2d 411, 414 (8th Cir. 1988); *Lyons v. Farrier*, 730 F.2d 525, 527 (8th Cir. 1984).

¹⁶¹ *Wolfish v. Levi*, 573 F.2d 118, 132-33 (2d Cir. 1978), *rev'd on other grounds sub non*. *Bell v. Wolfish*, 441 U.S. 559 (1979); *In re Alcala*, 222 Cal.App.3d 345, 271 Cal.Rptr. 674, 691-95 (Cal.App. 1990) (prohibition of most civilian clothing did not violate federal or state law).

PRISONERS' SELF-HELP LITIGATION MANUAL

forms.¹⁶⁰

The denial of clothing to prisoners in segregation units or under atric isolation or restraint, even for short periods of time, may vio Eighth Amendment or deny due process unless prison officials c strate a strong justification for such treatment.¹⁶¹

F. Medical Care

Since prisoners cannot obtain their own medical services, the Ci tion requires prison authorities to provide them with "reasonab quate" medical care.¹⁶² Courts have defined "adequate" medical s as "services at a level reasonably commensurate with modern med

¹⁶⁰ *Estelle v. Williams*, 425 U.S. 501, 96 S.Ct. 1691 (1976); *Felts v. Estelle*, 875 F.2d (9th Cir. 1989). *But see Saenz v. Marshall*, 791 F.Supp. 812, 814-15 (C.D.C. appearance of a defense witness in prison garb did not violate the defendant *aff'd*, 990 F.2d 1260 (9th Cir. 1993); *Wilson v. DeBruyn*, 633 F.Supp. 1222 (1986) (federal court lacked jurisdiction to intervene in pending criminal question of clothing at trial).

¹⁶¹ *Johnson v. Williams*, 788 F.2d 1319, 1323 (8th Cir. 1986); *Wells v. Franzen*, 1258, 1264 (7th Cir. 1985); *Maxwell v. Mason*, 668 F.2d 361, 363-65 (8th Cir. 1981); *McCray v. Burrell*, 622 F.2d 705, 706-07 (4th Cir. 1980), *cert. denied*, 449 U.S. and 449 U.S. 1003 (1980); *Inmates of Allegheny County Jail v. Wecht*, 565 F.Supp. 1286 (W.D.Pa. 1983); *see also Walker v. Johnson*, 544 F.Supp. 345, 361 (E.D.M. prisoners in segregation could not be required to walk naked to the showe *perment part sub non*. *Walker v. Mintzes*, 771 F.2d 920, 929 (6th Cir. 1985); *am cited in §J of this chapter*, n. 713. *But see Johnson v. Boreani*, 946 F.2d 67, 70-7: 1991) (officials were entitled to qualified immunity for repeated short depri clothing); *Porth v. Farrier*, 934 F.2d 154, 156-57 (8th Cir. 1991) (unjustifed deprivation of clothing would have permitted, but did not require, a jury verd plaintiff); *Campbell v. Grammer*, 889 F.2d 797, 802 (8th Cir. 1989) (in deprivation of clothing did not violate Eighth Amendment); *Green v. Baron* 305, 309-10 (8th Cir. 1989) (deprivation of clothing as part of a behavior mc program might have been justified by prisoner's mental condition); *Rodgers v* 879 F.2d 380, 385 (8th Cir. 1989) (unjustified deprivation of clothing, unconstitutional where other conditions were adequate); *Hawkins v. Hall*, 644 917-18 (1st Cir. 1981) (deprivation of clothing for less than 24 hours pendin and mental examinations upheld where ventilation, lighting and heat were i *McMahon v. Beard*, 583 F.2d 172, 174-75 (5th Cir. 1978) (three-month nude co without mattress, sheet or blankets did not violate the Eighth Amendment prisoner continued to present a suicide risk); *Friends v. Moore*, 776 F.Supp. 1390-91 (E.D.Mo. 1991) (leaving the plaintiff stripped naked and wet in a se yard area was not unconstitutional because the defendants intended to res rather than punish).

¹⁶² *In LeMaire v. Maass*, 745 F.Supp. 623, 639 (D.Or. 1990), *vacated and remanded*, 1444 (9th Cir. 1993), the lower court held unconstitutional the practice prisoners' clothing and returning it only after they "earned it back" thro behavior. This practice violated prison rules, and the appeals court held tl officials should be enjoined only to follow their own rules. 12 F.3d at 1455.

Newman v. Alabama, 559 F.2d 283, 291 (5th Cir.), *cert. denied*, 438 U.S. 915 (1978); *Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th Cir. 1982); *Wolfish v. Levi*, 573 F.2 (2d Cir. 1978), *rev'd on other grounds sub non*. *Bell v. Wolfish*, 441 U.S. 520 (1978); *Langley v. Coughlin*, 888 F.2d 252, 254 (2d Cir. 1989) (officials mus "reasonably necessary medical care . . . which would be available to [the prisn incarcerated").

PRISONERS' SELF-HELP LITIGATION MANUAL

ence and of a quality acceptable within prudent professional standards,¹⁶³ and as "a level of health services reasonably designed to meet routine and emergency medical, dental and psychological or psychiatric care."¹⁶⁴

In practice, providing care to prisoners generally means paying for the care, since most prisoners have little money and no medical insurance and are ineligible for public assistance.¹⁶⁵ The fact that the care may be expensive does not excuse prison officials from providing it.¹⁶⁶ If a prisoner does have money or insurance, it is probably not unconstitutional to bill the prisoner for the costs of medical care.¹⁶⁷

Some states have statutes to this effect, usually covering prisoners in local jails who require treatment at outside hospitals.¹⁶⁸ But prison officials may not withhold medical care until the prisoner pays or agrees to pay; they must first provide the care and leave arguments about money until later.¹⁶⁹

Recently some states have begun requiring prisoners to pay small amounts of money for medical visits. One such requirement was found unconstitutional because it would have required days and even weeks at inmate pay rates to earn the money, and would have fallen particularly harshly on the chronically ill who require more medical care than other prisoners.

¹⁶³ *Fernandez v. United States*, 941 F.2d 1488, 1493 (11th Cir. 1991); *United States v. DeCologero*, 821 F.2d 39, 43 (1st Cir. 1987); *Tillery v. Owens*, 719 F.Supp. 1256, 1305 (W.D.Pa. 1989), *aff'd*, 907 F.2d 418 (3d Cir. 1990).

¹⁶⁴ *Tillery v. Owens*, 719 F.Supp. at 1301; *accord*, *Ramos v. Lamm*, 639 F.2d 559, 574 (10th Cir. 1980), *cert. denied*, 450 U.S. 1041 (1981).

¹⁶⁵ *Monmouth County Correctional Institution Inmates v. Lanzaro*, 834 F.2d 326, 350 (3d Cir. 1987), *cert. denied*, 486 U.S. 1066 (1987), *citing* *City of Revere v. Mass. General Hospital*, 463 U.S. 239, 245-46, 103 S.Ct. 2979 (1983).

¹⁶⁶ *Harris v. Thigpen*, 941 F.2d 1495, 1509 (11th Cir. 1991); *Langley v. Coughlin*, 888 F.2d at 254; *Ancata v. Prison Health Services, Inc.*, 769 F.2d 700, 705 (11th Cir. 1985); *Yarbaugh v. Roach*, 736 F.Supp. 318, 320 n. 7 (D.D.C. 1990).

¹⁶⁷ *Smith v. Linn County*, 342 N.W.2d 861, 863 (Iowa 1984); *Metro. Dade County v. P.L. Dodge Foundations*, 509 So.2d 1170, 1173 (Fla.App. 1987); *see City of Revere v. Mass. General Hospital*, 463 U.S. at 245 n. 7 (leaving question open); *Matter of Commitment of F.H.*, 258 N.J. Super. 532, 610 A.2d 882, 884-85 (N.J. Super.A.D. 1992) (statute permitting state to recover costs of mental hospitalization from patient's assets did not apply to prisoners).

¹⁶⁸ *Ancata v. Prison Health Services, Inc.*, 769 F.2d at 705 n. 7 (11th Cir. 1985); *Smith v. Linn County*, 342 N.W.2d at 863; *Salem Hospital v. Marion County*, 307 Or. 213, 766 P.2d 376, 378-81 (Or. 1988); *Montana Deaconess Medical Center v. Johnson*, 232 Mont. 474, 758 P.2d 756, 757-58 (Mont. 1988); *see also Smith v. Dept. of Corrections*, 105 Or.App. 61, 804 P.2d 482, 484 (Or.App. 1990) (upholding rules requiring inmates to pay for certain prosthetic devices; constitutional claims not raised).

¹⁶⁹ *Monmouth County Correctional Institution Inmates v. Lanzaro*, 834 F.2d at 351.

PRISONERS' SELF-HELP LITIGATION MANUAL

The statute was then amended to charge only for physician v without a referral from a nurse or physician's assistant, and t version was upheld as constitutional.¹⁷⁰

Prisoners who are denied adequate medical care may use 4 1983 to sue prison medical care providers, including personnel : rations who work as private contractors.¹⁷¹ They may also see for medical malpractice under state law.¹⁷²

1. The Deliberate Indifference Standard

The Supreme Court has stated that "deliberate indifference medical needs of prisoners constitutes the 'unnecessary and wai tion of pain' . . . proscribed by the Eighth Amendment."¹⁷³ M have also applied the deliberate indifference standard to pr tainees under the Due Process Clause.¹⁷⁴ State law-statutes tions, or case law-may provide different standards.¹⁷⁵

¹⁷⁰ *Collins v. Romer*, 962 F.2d 1508, 1513-14 (10th Cir. 1992); *see also Scott v. A F.Supp.* 1064, 1067 (D.Nev. 1991) (describing a similar statute but not i validity), *aff'd*, 980 F.2d 738 (9th Cir. 1992).

¹⁷¹ *See* cases cited in Ch. VIII, § B.1.c.

Some courts have held that you can sue a medical care corporation unde only for injuries that result from policies of the corporation. *Howell v. Evi 712, 723-25* (11th Cir.), *vacated as settled*, 901 F.2d 711 (11th Cir. 1991); *McIlw William Hospital*, 774 F.Supp. 986, 989-90 (E.D.Va. 1991); *Miller v. Correcti Systems, Inc.*, 802 F.Supp. 1126, 1132 (D.Del. 1992). This means that if you by the deliberate indifference of doctors or other employees of such a corp will probably have to sue them individually. *See Hicks v. Frey*, 992 F.2d] (6th Cir. 1993) (upholding judgment against employee and dismissal of c corporation).

¹⁷² *See* § 5 of this chapter on negligence and malpractice.

¹⁷³ *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S.Ct. 285 (1976).

¹⁷⁴ *Salazar v. City of Chicago*, 940 F.2d 233, 237-38 (7th Cir. 1991); *Marlin County Comm'rs of Pueblo County*, 909 F.2d 402, 406 (10th Cir. 1990); *Molt Cleveland*, 839 F.2d 240, 242-43 (6th Cir. 1988), *cert. denied*, 489 U.S. 1068 (1 v. Kozakiewicz, 833 F.2d 468, 471-73 (3d Cir. 1987), *cert. denied*, 485 U.S. 9; *also City of Revere v. Mass. General Hospital*, 463 U.S. 239, 244, 103 S.Ct. (detainees' due process rights are "at least as great" as Eighth Amendment) *Bryant v. Maffucci*, 923 F.2d 979, 983 (2d Cir. 1991) (constitutional standar detainees' medical care remains unsettled), *cert. denied*, 112 S.Ct. 152 (1991).

One court has held that detainees "are entitled to a greater degree of r than convicted inmates. They must be provided with 'reasonable medical the failure to supply it is reasonably related to a legitimate governmental Rhnye v. Henderson County, 973 F.2d 386, 391 (5th Cir. 1992) (citat However, the same court has stated that this 'may indeed be a distinctio difference' from the deliberate indifference standard. *Cupit v. Jones*, 835 (5th Cir. 1987). Another court has held that denial of medical care to an a has not been arraigned is governed by a Fourth Amendment 'objective reas standard, under which the presence or absence of punitive intent is n Freee v. Young, 756 F.Supp. 699, 705-04 (W.D.N.Y. 1991).

¹⁷⁵ *See, e.g., Jorgenson v. Schiedler*, 87 Or.App. 100, 741 P.2d 528, 529 (Or.App. constitution requires 'such medical care in the form of diagnosis and tre; reasonably available under the circumstances of [the prisoner's] confir medical condition'.

State law claims of malpractice or negligence may be litigated as tort cla

PRISONERS' SELF-HELP LITIGATION MANUAL

Under the deliberate indifference standard, courts will not take sides in disagreements with medical personnel's judgments or techniques.¹⁷⁶ In general, as long as there has been an exercise of professional judgment—even a mistaken or incompetent one—the courts will hold that the Constitution has been satisfied.¹⁷⁷ Negligence or medical malpractice generally do not violate the Constitution, with one important exception.

Several courts have held that "repeated examples of negligent acts which disclose a pattern of conduct by the prison medical staff" may add up to deliberate indifference.¹⁷⁸

Deliberate indifference can be shown in various ways.¹⁷⁹ Sometimes it is demonstrated by acts or statements by prison personnel directly showing an indifferent or hostile attitude toward prisoners' medical

court; these are discussed in § F.5 of this chapter.

¹⁷⁶ *Varnado v. Collins*, 920 F.2d 320, 321 (5th Cir. 1991); *Smith v. Marcantonio*, 910 F.2d 500, 502 (8th Cir. 1990); *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). Cf. *Bailey v. Gardebring*, 940 F.2d 1150, 1155 (8th Cir. 1991) (failure to provide treatment is not deliberate indifference if there is no accepted form of treatment for the patient's condition). *cert. denied*, 112 S.Ct. 1516 (1992).

There is an exception. Prison officials may not shop around until they get a medical opinion that suits their non-medical concerns and may not intentionally rely on a medical opinion that is without adequate basis. *Hamilton v. Endell*, 981 F.2d 1063, 1066-67 (9th Cir. 1992).

¹⁷⁷ See *Brown v. Borough of Chambersburg*, 903 F.2d 274, 278 (3d Cir. 1990) (failure to diagnose broken ribs was not deliberate indifference); *Graves v. Jones*, 900 F.2d 1229, 1232-33 (8th Cir. 1990) (giving a prisoner medication to which he was allergic was negligence at worst); *Benson v. Cady*, 761 F.2d 335, 341 (7th Cir. 1985) (prescription of wrong drug was only malpractice); *Owens-Eli v. United States Attorney General*, 759 F.2d 349, 350 (4th Cir. 1985) (unnecessary continuation of dangerous drug was merely negligent); *Supre v. Ricketts*, 792 F.2d 958, 963 (10th Cir. 1986) (decision not to give female hormones to transsexual was not deliberately indifferent); *Gordon v. Higgs*, 716 F.Supp. 1351, 1353 (D.Nev. 1988) (failure to take an x-ray was no more than negligent); *Mastrota v. Robinson*, 534 F.Supp. 434, 436, 438 (E.D. 1982) (claim of failure to diagnose vertebral fracture and failure to insert drainage tube after surgery did not state an Eighth Amendment violation). *But see* *Boyce v. Alizadeh*, 595 F.2d 948, 952-53 (4th Cir. 1979) (giving a prisoner medication to which he was allergic could be deliberate indifference); *Thomas v. Pate*, 493 F.2d 151, 158 (7th Cir.) (same as *Boyce*), *cert. denied*, 419 U.S. 879 (1974).

¹⁷⁸ *Ramos v. Lamm*, 639 F.2d 559, 575 (10th Cir. 1980), *cert. denied*, 450 U.S. 1041 (1981); *accord*, *Harris v. Thigpen*, 941 F.2d 1495, 1505 (11th Cir. 1991); *DeGidio v. Pung*, 920 F.2d 525, 533 (8th Cir. 1990) ("consistent pattern of reckless or negligent conduct" establishes deliberate indifference); *Todaro v. Ward*, 565 F.2d 48, 52 (2d Cir. 1977) (acts that appear negligent in isolation may constitute deliberate indifference if repeated); *Williams v. O'Leary*, 805 F.Supp. 634, 638 (N.D.Ill. 1992) (deliberate indifference could be inferred from negligent treatment of long duration); *Diaz v. Broglin*, 781 F.Supp. 566, 564 (N.D.Ill. 1991); *Langley v. Coughlin*, 715 F.Supp. 522, 541 (S.D.N.Y. 1988); *Robert E. v. Lane*, 530 F.Supp. 930, 940 (N.D.Ill. 1981) ("A pattern of similar instances presumptively indicates that prison administrators have, through their programs and procedures, created an environment in which negligence is unacceptably likely"); *see also* *Kelley v. McGinnis*, 899 F.2d 612, 616 (7th Cir. 1990) (noting court has not ruled "definitively" on this "potential theory of recovery").

¹⁷⁹ The general definition of deliberate indifference is discussed in § A.2 of this chapter. However, there are large numbers of cases applying the standard to prison medical care, and we focus on those cases here.

PRISONERS' SELF-HELP LITIGATION MANUAL

needs.¹⁸⁰ But most often, courts focus on facts that show the judgment was either not exercised or was not followed exercised. In those fact situations, good intentions may not As one court stated:

Deliberate indifference can be proved by showing prison official's mental state. But deliberate indifference is also a standard for measuring adequacy of prison officials' responses to the known medical needs of inmates and their system allowing inmates to make their needs known.¹⁸¹

There are several familiar fact patterns that courts have held constitute deliberate indifference:

(a) Delay or denial of access to medical attention.¹⁸² How is tolerated, of course, depends on the seriousness and urgency

¹⁸⁰ *Hughes v. Joliet Correctional Center*, 931 F.2d 425, 428 (7th Cir. 1991) (prisoner with spinal injury he was "full of bullshit"); *White v. Napolet* 109 (3d Cir. 1990) (doctor allegedly burned the hand of an inmate who feeling); *Kersh v. Derozier*, 851 F.2d 1509, 1510, 1513 (5th Cir. 1988) (sight in one eye because police and jail personnel would not let him out of it); *Meriwether v. Faulkner*, 821 F.2d 408, 413 (7th Cir.) (transsexual prisoner and completely denied care), *cert. denied*, 484 Mullen v. Smith, 738 F.2d 317, 318-19 (8th Cir. 1984) (prisoner was subjected and "denied" in response to complaints of pain and inability to walk Vincent, 508 F.2d 541, 544 (2d Cir. 1974) (doctor refused to try to treat severed ear and threw it away in front of him); *Phillips v. Mic* Corrections, 731 F.Supp. 792, 800 (W.D.Mich. 1990) (doctor direct offensive remarks to a transsexual prisoner), *aff'd*, 932 F.2d 969 (6th Cir. v. Coughlin, 715 F.Supp. 522, 541 (S.D.N.Y. 1988) (deliberate indifference supported by "displays of hostility by prison psychiatrists to their fen which sometimes led to outright refusals to treat"); *Smallwood v. Ren* 182, 187-88 (N.D.Ill. 1989) (deliberate indifference claim was supported that a lieutenant overruled a decision to send the plaintiff to a hospital; and hit the plaintiff).

¹⁸¹ *Dean v. Coughlin*, 623 F.Supp. 392, 402 (S.D.N.Y. 1985), *accord*, *Weeks v* F.2d 185, 187 (6th Cir. 1993) ("... [A] determination of deliberate indifference require proof of intent to harm or a detailed inquiry into [the] defendant mind. [The] facts establish that he was deliberately indifferent Faulkner, 715 F.2d 269, 273 (7th Cir. 1983) ("good intentions" do not constitute systemic deficiency"), *cert. denied*, 468 U.S. 1217 (1984); *Todaro v. W*; 1129, 1160 (S.D.N.Y.), *aff'd*, 565 F.2d 48 (2d Cir. 1977).

¹⁸² *Estelle v. Gamble*, 429 U.S. at 104 ("intentionally denying or delaying a care"); *Fields v. City of South Houston, Texas*, 922 F.2d 1183, 1192 n. 1 (evidence that police officers exercised wide discretion in summoning prisoners); *Miller v. Beorn*, 896 F.2d 848, 853-54 (4th Cir. 1990) (nurses infirmity patient who lost consciousness and fell); *Boswell v. Sherbu* F.2d 1117, 1122 (10th Cir. 1988) (delay in hospitalizing a miscarriage denied, 488 U.S. 1010 (1989); H.C. by Hewett v. Jarrard, 786 F.2d 1080, Cir. 1986) (isolation of injured inmate and deprivation of medical attention); *Archer v. Dutcher*, 733 F.2d 14, 16-17 (2d Cir. 1984) (similar to *Bo* Prison Health Services, Inc., 769 F.2d 700, 704-05 (11th Cir. 1985) (re: specialty consultations without a court order); *Robinson v. Moreland* 889-90 (8th Cir. 1981) (weekend's delay in treating a broken hand); *Hur* F.2d 940, 941-42 (5th Cir. 1978) (refusal to take a prisoner to a doctor

PRISONERS' SELF-HELP LITIGATION MANUAL

medical need.¹⁸³

(b) Denial of access to medical personnel qualified to exercise judgment about a particular medical problem. There are several variations on this theme. In some cases, personnel may simply lack medical qualifications or training.¹⁸⁴ In others, prisoners are denied access to medical personnel with the necessary specialized expertise.¹⁸⁵ Sometimes prisoners who need a physician's care are permitted to see only lower-level, non-physician personnel.¹⁸⁶

(c) Failure to inquire into essential facts that are necessary to make a professional judgment. As one court put it, "We will defer to the informed judgment of prison officials as to an appropriate form of medical treatment. But if an informed judgment has not been made, the court may find that an eighth amendment claim has been stated."¹⁸⁷ Such cases may involve failure to conduct an adequate examination,¹⁸⁸ failure to ask nec-

McGill v. Mountainside Police Dept. 720 F.Supp. 418, 423 (D.N.J. 1989) (police officers' failure to get medical help for arrestee who was vomiting blood and had breathing difficulties); Tomarkin v. Ward, 534 F.Supp. 1224, 1235 (S.D.N.Y. 1982) (denial of medical care in solitary confinement); Isaac v. Jones, 529 F.Supp. 175, 180 (N.D.Ill. 1981) (delay by guards in providing care); see also Hodge v. Ruperto, 739 F.Supp. 873, 879 (S.D.N.Y. 1990) (police officers could be held liable for removing an arrestee from the hospital before his x-rays could be examined and his injuries treated).

¹⁸³ See, e.g., Bass by Lewis v. Wallenstein, 769 F.2d 1173, 1178, 1183 (7th Cir. 1985) (holding ten to fifteen-minute delay in doctor's response to a patient in cardiac arrest supported liability). One court has stated that "an unexplained delay of hours in treating a serious injury states a prima facie case of deliberate indifference." Brown v. Hughes, 894 F.2d 1533, 1538 (11th Cir. 1990) (four-hour delay in treating a broken foot), cert. denied, 110 S.Ct. 2624 (1990); Reed v. Dunham, 893 F.2d 285, 287 (10th Cir. 1990) (two-hour delay in treatment for stab wounds); Van Cleave v. United States, 854 F.2d 82, 84 (5th Cir. 1988) (24-hour delay in treating injuries sustained during arrest); Loe v. Armistead, 582 F.2d 1291, 1296 (4th Cir. 1978) (22-hour delay in treating a broken arm), cert. denied, 446 U.S. 928 (1980); Johnson v. Summers, 411 Mass. 82, 577 N.E.2d 301, 305 (Mass. 1991) (delay of hours in taking prisoner with a broken leg to the hospital), cert. denied, 112 S.Ct. 1166 (1992). But see Mills v. Smith, 656 F.2d 337, 340 (8th Cir. 1981) (one and a half hour delay in hospitalizing a prisoner with a gunshot wound did not constitute deliberate indifference); Brown v. Commissioner of Cecil County Jail, 501 F.Supp. 1124, 1126-27 (D.Md. 1980) (delay of less than a week in treating gonorrhea was not deliberate indifference).

¹⁸⁴ Williams v. Edwards, 547 F.2d 1206, 1216-18 (5th Cir. 1977) (Constitution was violated by medical staff consisting of mostly unlicensed doctors, untrained inmates and an untrained pharmacist); Casey v. Lewis, 834 F.Supp. 1477, 1545 (D.Ariz. 1993) (making of medical judgments by security staff could constitute deliberate indifference).

¹⁸⁵ See § F.3.c of this chapter.

¹⁸⁶ See § F.3.c of this chapter.

¹⁸⁷ Tillery v. Owens, 719 F.Supp. 1256, 1308 (W.D.Pa. 1989), aff'd, 907 F.2d 418 (3d Cir. 1990).

¹⁸⁸ Tillery v. Owens, 719 F.Supp. at 1306, 1308 (citing "cursory" sick call inquiries and intake physical examinations that were not "thorough" and in which the patient was never touched); see §§ F.3.a, F.3.b of this chapter. But see Brown v. Borough of Chambersburg, 903 F.2d 274, 278 (3d Cir. 1990) (failure to perform a physical examination, resulting in failure to diagnose broken ribs, was not deliberate indifference). In our opinion, Brown was incorrectly decided, and the failure to perform

PRISONERS' SELF-HELP LITIGATION MANUAL

essary questions or take a history,¹⁸⁹ or failure to conduct tests of prisoner's symptoms call for.¹⁹⁰

(d) Interference with medical judgment by non-medical factors. These factors can include staffing that is so inadequate that medical personnel lack the time to do their jobs,¹⁹² facilities and procedures not allow for proper diagnosis and treatment,¹⁹³ and rules or procedures restricting medical care on non-medical grounds.¹⁹⁴

so obvious an examination should be considered deliberate indifference.

¹⁸⁹ Liscio v. Warren, 901 F.2d 274, 276-77 (2d Cir. 1990) (physician failed to inquire cause of an arrestee's delirium and thus failed to diagnose alcohol withdrawal); v. Alizaduh, 595 F.2d 948, 952-53 (4th Cir. 1979) (prison doctor ignored a common allergy to medication).

¹⁹⁰ Millier v. Beorn, 896 F.2d 848, 853 (4th Cir. 1990) (doctor failed to perform cardiac disease in patient with symptoms that called for them); Medcalf v. Kansas, 626 F.Supp. 1179, 1183 (D.Kan. 1986) (doctor failed to order tests suggested by "the elemental and classic symptoms of a brain tumor"); Weaver 611 F.Supp. 40, 44 (N.D.Ca. 1985) (prison doctor refused to conduct diagnostic a prisoner with symptoms of optic disease leading to blindness).

¹⁹¹ See West v. Atkins, 487 U.S. 42, 56 n. 15, 108 S.Ct. 2250 (1988) (acknowledging nonmedical functions of prison life inevitably influence the nature, timing and medical care provided to inmates"); Durmer v. O'Carroll, 991 F.2d 64, 68-69 (1993) (holding that delay of treatment for non-medical reasons could constitute deliberate indifference); Hamilton v. Endell, 981 F.2d 1063, 1066-67 (9th Cir. 1992) (holding that prison officials' disregarding a surgeon's recommendation non-medical grounds could constitute deliberate indifference); Delker v. McF. F.Supp. 1390, 1398, 1401 (D.Or. 1994).

¹⁹² See § F.3.c of this chapter.

¹⁹³ Matzker v. Herr, 748 F.2d 1142, 1147 (7th Cir. 1984) (lack of facilities) overruled grounds, Salazar v. City of Chicago, 940 F.2d 233, 240 (7th Cir. 1991); Green v. 581 F.2d 669, 671, 675 (7th Cir. 1978) (failure to provide coverage for emergencies, failure to maintain working respirator, staff who did not know operate emergency equipment), aff'd, 446 U.S. 14 (1980); Lightfoot v. Wal F.Supp. 504, 517, 527 (S.D.Ill. 1980) (inadequate system of medical records).

A number of cases have held that sick call procedures that did not permit an assessment of the prisoner's complaint are constitutionally inadequate. See § this chapter. Inadequate physical facilities and medical records systems have a found to violate the Constitution. See §§ F.3.e, F.3.f of this chapter.

¹⁹⁴ Monmouth County Correctional Institution Inmates v. Lanzaro, 834 F.2d 326, 486 U.S. 1066 (1988); Jones v. Johnson, 781 F.2d 769, 771 (9th Cir. 1986) (br restrictions); Ancata v. Prison Health Services, Inc., 769 F.2d 700, 704-05 (11th Cir. refusal to provide specialty consultations without a court order); Casey v. Le F.Supp. at 1545 (security staff's overruling of medical orders); United States v. Michigan, 680 F.Supp. 928, 1002, 1043-45 (W.D.Mich. 1987) (security or transport constraints).

There are a few situations in which courts have upheld security-based restrictive medical treatment. Prisons may limit the availability of narcotics and other drugs because of their potential for abuse as long as they provide other treatment prisoners' pain and other medical problems. Lawhorn v. Duckworth, 736 F.Supp. 1505 (N.D.Ind. 1987), aff'd, 902 F.2d 37 (7th Cir. 1990) (Valium); Wolfel v. Ferguson F.Supp. 756, 760 (S.D. Ohio 1987); see also Inmates of Allegheny County Jail v. The F.2d 754, 760-61 (3d Cir. 1979) (jail officials could limit methadone treatment because of the security problems in placing them in either male or female White v. Farrier, 849 F.2d 322, 327 (8th Cir. 1988). See § F.4.a of this chapter for discussion of transsexuals in prison.

PRISONERS' SELF-HELP LITIGATION MANUAL

(e) Failure to carry out medical orders.¹⁹⁵ Such cases often involve the failure to provide prescribed medication¹⁹⁶ or the failure to act on medical recommendations for surgery or for other specialized care,¹⁹⁷ including hospitalization or other care not available in the prison.¹⁹⁸

In addition to these "no professional judgment" cases, there are also many decisions that say, in effect, that not every judgment by a doctor is a medical judgment,¹⁹⁹ or that extreme cases of bad judgment by medical

¹⁹⁵ *Estelle v. Gamble*, 429 U.S. at 105 ("intentionally interfering with the treatment once prescribed"); *Aswegen v. Bruhl*, 965 F.2d 676, 677-68 (8th Cir. 1992) (failure to honor doctors' orders and refrain from cuffing the plaintiff's hands behind his back); *Boretti v. Wisconsin*, 930 F.2d 1150, 1156 (6th Cir. 1991) (nurse's failure to perform prescribed dressing change); *Martin v. Board of County Commissioners of Pueblo County*, 909 F.2d 402, 406 (10th Cir. 1990) (moving an arrestee with a broken neck against doctor's orders); *Payne v. Lynaugh*, 843 F.2d 177, 178 (5th Cir. 1988) (denial of access to recommended life-saving equipment); *Gill v. Mooney*, 824 F.2d 192, 195-96 (2d Cir. 1987) (denial of gymnasium time prescribed as rehabilitation therapy); *Arnold* on behalf of H.B. v. Lewis, 803 F.Supp. 246, 257 (D.Ariz. 1992) (overriding of medical decisions by security staff); *Jones v. Evans*, 544 F.Supp. 769, 774-76 (N.D.Ca. 1982) (confiscation of prescribed back brace); *Goodman v. Wagner*, 553 F.Supp. 255, 257 (E.D.Pa. 1982) (failure to follow a doctor's orders for wound treatment); *Johnson v. Harris*, 479 F.Supp. 333, 335-37 (S.D.N.Y. 1979) (failure to provide special diet for diabetic).

One court has recently held that prison officials' failure to obey a medical order for showers and dressing changes did not constitute deliberate indifference. *DesRosiers v. Moran*, 949 F.2d 15, 19-20 (1st Cir. 1991). In our opinion this decision is contrary to *Estelle v. Gamble*'s reference, cited above, to "intentionally interfering with the treatment once prescribed" as a form of deliberate indifference.

¹⁹⁶ *Aswegen v. Bruhl*, 965 F.2d at 677-78; *Hill v. Marshall*, 962 F.2d 1209, 1213-14 (6th Cir. 1992), cert. denied, 113 S.Ct. 2992 (1993); *Johnson v. Hay*, 931 F.2d 456, 461-62 (8th Cir. 1991); *Boretti v. Wisconsin*, 930 F.2d at 1156; *Johnson v. Hardin County, Ky.*, 908 F.2d 1280, 1284 (6th Cir. 1990); *Ellis v. Butler*, 890 F.2d 1001, 1003-04 (8th Cir. 1989); *Mitchell v. Aluisi*, 872 F.2d 577, 581 (4th Cir. 1989) (confiscation of prescribed medication); *Williams v. O'Leary*, 805 F.Supp. 634, 638 (N.D.Ill. 1992); *Lowe v. Board of Comm'rs, County of Dauphin*, 750 F.Supp. 697, 700 (M.D.Pa. 1990) (undiscriminate confiscation of medication from all incoming inmates); *Goodman v. Wagner*, 553 F.Supp. 255, 257 (E.D.Pa. 1982).

Some courts have held that denial or delay of prescribed medication does not violate the Eighth Amendment if the delay is short or the consequences are not serious. *Mayweather v. Foti*, 958 F.2d 91, 95th Cir. 1992); *Martin v. New York City Dept. of Corrections*, 522 F.Supp. 169, 170 (S.D.N.Y. 1981); *Russell v. Enser*, 496 F.Supp. 320, 326-28 (D.S.C. 1979), aff'd, 624 F.2d 1095 (4th Cir. 1980); *Burrascano v. Levi*, 452 F.Supp. 1066, 1069 (D.Md. 1978), aff'd, 612 F.2d 1306 (4th Cir. 1979); see also *Harris v. Mapp*, 719 F.Supp. 1317, 1324-25 (E.D.Va. 1989) (failure to provide prescribed Dilantin was merely negligent; the prisoner died), aff'd, 907 F.2d 1138 (4th Cir. 1990).

¹⁹⁷ *Johnson v. Lockhart*, 941 F.2d 705, 706-07 (8th Cir. 1991) (10-month delay in surgery that doctor recommended be done within days); *Howell v. Evans*, 922 F.2d 712, 723 (11th Cir. 1991) (failure to act on a medical judgment that prisoners needed access to a respiratory therapist), vacated as settled, 931 F.2d 711 (11th Cir. 1991); *Johnson v. Bowers*, 884 F.2d 1053, 1056 (8th Cir. 1989) (failure to perform surgery recommended by prison doctor); *Dace v. Solem*, 858 F.2d 385, 387-88 (8th Cir. 1988) (failure of prison doctors to carry out surgery scheduled before plaintiff's incarceration); *LaFaut v. Smith*, 834 F.2d 389, 393-94 (4th Cir. 1987) (failure to provide rehabilitation therapy recommended by orthopedic specialist); *Johnson-El v. District of Columbia*, 579 A.2d 163, 169 (D.C. 1990) (failure to take prisoner to dermatologist).

¹⁹⁸ See § F.3.d of this chapter.

¹⁹⁹ See, e.g., *Hughes v. Joliet Correctional Center*, 931 F.2d 425, 428 (7th Cir. 1991) (evidence that medical staff treated the plaintiff "not as a patient, but as a nuisance," and "were insufficiently interested in his health to take even minimal steps to guards against the

PRISONERS' SELF-HELP LITIGATION MANUAL

personnel constitute deliberate indifference. For example, one federal appeals court has held that treatment "so grossly incompetent, inadequate or excessive as to shock the conscience" or "so inappropriate as to constitute intentional maltreatment" violates the Eighth Amendment.²⁰⁰

In these cases, courts give substantial weight to expert testimony concerning the prisoner's care, rather than dismissing it as a difference of opinion among doctors.²⁰¹ Most cases of this nature involve not just bad but also very serious medical conditions, often leading to death, disfigurement.²⁰² Their reasoning may not be extended to less serious cases.

possibility that the injury was severe" could support a finding of deliberate indifference). Courts have observed that the Constitution is violated "if the indifference causes an easier and less efficacious treatment to be consciously by the doctors." *Williams v. Vincent*, 508 F.2d 541, 544 (2d Cir. 1974); *accord*, *Moi County Jail Inmates v. Lanzaro*, 834 F.2d at 347; *Maynard v. New Jersey*, 719 F.2d 292, 295 (D.N.J. 1989) (evidence that prisoner received only palliative treatment for severe complications of AIDS raised a factual question of deliberate indifference). *Rogers v. Evans*, 792 F.2d 1052, 1058 (11th Cir. 1986) (emphasis supplied); *Howell v. Evans*, 922 F.2d 712, 719 (11th Cir. 1991) ("the contemporary standards of the medical profession are highly relevant in determining what constitutes deliberate indifference"); *vacated as settled*, 931 F.2d 711 (11th Cir. 1991); *See Jenkins*, 919 F.2d 90, 93 (8th Cir. 1990) (plaintiff should be permitted to prove treatment "so deviated from professional standards that it amounted to deliberate indifference"); *Rosen v. Chang*, 811 F.Supp. 754, 760-61 (D.R.I. 1993) ("incompetent and recklessly inadequate examination by a licensed physician constitute deliberate indifference"). Another court recently held that a deliberate indifference claim was stated by "allegations that the doctor intended to inflict instances in which the doctor allegedly insisted on continuing courses of treatment the doctor knew were painful, ineffective, or entailed substantial risk of serious harm to the prisoners." *White v. Napoleon*, 897 F.2d 103, 109 (3d Cir. 1990).

²⁰¹ "Whether an instance of medical misdiagnosis resulted from deliberate indifference or negligence is a factual question requiring exploration by expert witnesses." *Rogers v. Evans*, 792 F.2d at 1058; *accord*, *Smith v. Jenkins*, 919 F.2d at 94 (suggesting district court "may" appoint an independent expert or obtain an opinion from a prisoner's pre-incarceration doctor); *Liscio v. Warren*, 901 F.2d 274, 276 (2d Cir. 1990) (expert affidavit describing a prisoner's medical care as "severely mismanaged" supported a claim of deliberate indifference); *Miltier v. Beorn*, 896 F.2d 848, 851 (Cir. 1990); *Mandel v. Doe*, 888 F.2d 783, 790 (11th Cir. 1989); *Medcalf v. State of Alaska*, 626 F.Supp. 1179, 1190 (D.Kan. 1986) (prisoner's expert's description of medical gross negligence "raised a factual question for the jury"); see § F.2.b of this chapter. ²⁰² *Waldrop v. Evans*, 871 F.2d 1030, 1032-36 (11th Cir. 1989) (severe self-mutilation to psychiatric neglect), *rehearing denied*, 880 F.2d 421 (11th Cir. 1989); *Rogers v. Evans*, 792 F.2d at 1060-62 (suicide following psychiatric neglect); *Carswell v. Bay County, Fla.*, 454, 455-57 (11th Cir. 1988) (treatment of diabetic suffering catastrophic weight loss with laxatives and pain-killers); *Wood v. Sunn*, 865 F.2d 982, 989-90 (9th Cir. 1989) (doctors' disregarded complaints because they assumed the prisoner's psychological state); *he lost the ability to urinate*, *vacated*, 880 F.2d 1011 (9th Cir. 1989); *See Chang*, 811 F.Supp. 754, 760 (D.R.I. 1990) (death from untreated appendicitis); *v. Brierton*, 431 F.Supp. 50, 51-52 (N.D.Ill. 1976) (fatal administration of contraindicated medication states a claim). Some of the cases cited in n. 191 of this section concern the failure to perform tests are similar.

PRISONERS' SELF-HELP LITIGATION MANUAL

Prison personnel sometimes respond to allegations of deliberate indifference by saying that they did provide some medical care, or that your medical care was adequate in general. This claim may not be a valid defense; they must respond to the *particular* claim of deliberate indifference that you raise.

For example, one prisoner alleged that he suffered a broken nose, broken teeth, and an eye injury in a fight, but he only got treatment for the broken nose; the court ruled that his allegations stated a claim for deliberate indifference.²⁰³

In another case, a pregnant woman alleged a five-hour delay in taking her to the hospital when she began to miscarry; the court held that she had raised a factual issue of deliberate indifference concerning that incident even though she received "extensive" medical attention on other occasions.²⁰⁴ The deliberate indifference standard "does not necessarily excuse one episode of gross misconduct merely because the overall pattern reflects general attentiveness."²⁰⁵

a. Suing the Right Defendants

In pursuing a deliberate indifference claim, you must think closely about exactly *who* was deliberately indifferent—that is, who caused the constitutional violation and can be held liable for it.²⁰⁶ Doctors and other medical personnel can be liable for the consequences of their own acts or

One court has made this point explicit, stating that "life-threatening" or "fast-developing" conditions call for closer judicial scrutiny of prison medical care. *Liscio v. Warren*, 901 F.2d at 277.

²⁰³ *Matzker v. Herr*, 748 F.2d 1142, 1147-48 (7th Cir. 1984), *overruled on other grounds*, *Salazar v. City of Chicago*, 940 F.2d 233, 240 (7th Cir. 1991).

²⁰⁴ *Archer v. Dutcher*, 733 F.2d 14, 16-17 (2d Cir. 1984); see also *Smith v. Jenkins*, 919 F.2d 90, 93-94 (8th Cir. 1990) (mere proof of diagnosis by a doctor did not require dismissal of case; district court directed to review prisoner's medical records); *Williams v. O'Leary*, 805 F.Supp. 634, 638 (N.D.Ill. 1992) ("Mere volume of medical attention is insufficient to defend an Eighth Amendment claim."); *Henderson v. Harris*, 672 F.Supp. 1054, 1059 (N.D.Ill. 1987) (the fact that the prisoner received some care did not entitle the warden to have the case dismissed). Cf. *Knop v. Johnson*, 667 F.Supp. 512, 524-25 (W.D.Mich. 1987) (evidence that the prison system spends a lot of money and hires a lot of staff does not refute a deliberate indifference claim about the medical care system), *aff'd in part and rev'd in part on other grounds*, 977 F.2d 996 (6th Cir. 1992); *cert. denied*, 113 S.Ct. 1415 (1993).

²⁰⁵ *Murrell v. Bennett*, 615 F.2d 306, 310 n. 4 (5th Cir. 1980); see *McGuckin v. Smith*, 974 F.2d 1050, 1060-61 (9th Cir. 1992) (a finding that maltreatment was an "isolated exception" to the prisoner's overall treatment militates against a finding of deliberate indifference, but a single "egregious" failure may support a deliberate indifference claim); *Jones v. Evans*, 544 F.Supp. 769, 775 (N.D.Cal. 1982) (a defendant may respond to a claim of denial of care or inadequate care by "establishing he was generally attentive to the prisoner's needs"; a claim of interference with prescribed care is less subject to that defense).

²⁰⁶ The "causation" or "personal involvement" requirement applied in civil rights actions is discussed in Ch. VIII, § B.4.a.

PRISONERS' SELF-HELP LITIGATION MANUAL

omissions if they amount to deliberate indifference,²⁰⁷ but in some case the fault may be with correctional personnel who keep you from getting to see the medical staff or interfere with treatment that has been prescribed.²⁰⁸

Wardens and other correctional supervisors are not deliberately indifferent when they act in reliance on the judgments of qualified medical personnel.²⁰⁹

But they may be deliberately indifferent if they fail to provide adequate staff²¹⁰ or qualified staff,²¹¹ if they maintain policies that interfere with adequate medical care,²¹² if they fail to remedy unlawful conditions that they know or should know about,²¹³ or if they otherwise fail to carry out

²⁰⁷ See § F.1 of this chapter.

²⁰⁸ *Brown v. Hughes*, 894 F.2d 1533, 1537-39 (11th Cir. 1990), *cert. denied*, 110 S.Ct. 262 (1990); *Kelley v. McGinnis*, 899 F.2d 612, 616 (7th Cir. 1990); *Parrish v. Johnson*, 800 F.2d 600, 605 (6th Cir. 1986); *H.C. by Hewitt v. Jarrard*, 786 F.2d 1080, 1086-87 (11th Cir. 1986); *Lewis v. Cooper*, 771 F.2d 334, 336-37 (7th Cir. 1985); *Harris v. O'Grady*, 80 F.Supp. 1361, 1366 (N.D.Ill. 1992).

²⁰⁹ As one court observed, a warden is "not responsible for second-guessing his medical staff." *Tomarkin v. Ward*, 534 F.Supp. 1224, 1232 (S.D.N.Y. 1982); *accord*, *Millett v. Beorn*, 896 F.2d 848, 854-55 (4th Cir. 1990); *White v. Farrier*, 849 F.2d 322, 327 (8th Cir. 1988); *Sires v. Berman*, 834 F.2d 9, 13 (1st Cir. 1987); *McCracken v. Jones*, 562 F.2d 22, 2 (10th Cir. 1977), *cert. denied*, 435 U.S. 917 (1978); see also *Estate of Cartwright v. City of Concord, Cal.*, 856 F.2d 1437, 1438 (9th Cir. 1988) (jail staff were not liable for waiting for an ambulance instead of personally administering CPR).

Prison officials may not, however, shop around until they get a medical opinion that suits their non-medical plans for a prisoner. See *Hamilton v. Endell*, 981 F.2d 106, 1066-67 (9th Cir. 1992).

²¹⁰ *Greason v. Kemp*, 891 F.2d 829, 837-40 (11th Cir. 1990); *Anderson v. City of Atlanta*, 77 F.2d 678, 686-89 (11th Cir. 1985); *Miranda v. Munoz*, 770 F.2d 255, 260-62 (1st Cir. 1985); *Howell v. Evans*, 922 F.2d 712, 723 (11th Cir. 1991), *vacated as settled*, 931 F.2d 711 (11th Cir. 1991); *Bass by Lewis v. Wallenstein*, 769 F.2d 1173, 1184-86 (7th Cir. 1985); *Langbe v. Coughlin*, 715 F.Supp. 522, 540 (S.D.N.Y. 1988); *Medcalf v. State of Kansas*, 62 F.Supp. 1179, 1186 (D.Kan. 1986); see also § F.3.c of this chapter.

²¹¹ *Boswell v. Sherburne County*, 849 F.2d 1117, 1123 (10th Cir. 1988) (chief jailer and sheriff could be held liable based on evidence that "inadequately trained jailers were directed to use their own judgment about the seriousness of prisoners' medical need and that medical care was restricted in order to save money"); *cert. denied*, 488 U.S. 10 (1989); *Meade v. Grubbs*, 841 F.2d 1512, 1531 (10th Cir. 1988) (the failure of the state health commissioner to carry out statutory duties could be deliberate indifference); *Jones v. Johnson*, 781 F.2d 769, 771-72 (9th Cir. 1986) (supervisory officials could be liable for budgetary restrictions on medical care); *Bass by Lewis v. Wallenstein*, 77 F.2d at 1184-86 (damages awarded against assistant warden and medical administrator based on deficiencies in sick call procedure); *Ankata v. Prison Health Services, Inc.*, 71 F.2d 700, 705-06 (11th Cir. 1985) (sheriff could be held liable for requiring court order for outside medical care); *Green v. Carlson*, 581 F.2d 669, 671, 675 (7th Cir. 1978) (failure to provide emergency coverage when no doctor was on duty stated a claim against the chief medical officer), *aff'd*, 446 U.S. 14 (1980).

²¹² *Aswegan v. Bruhl*, 965 F.2d 676, 677-78 (8th Cir. 1992) (Deputy Warden and Security Director held liable for failure to correct known violations of doctors' orders); *Hill Marshall*, 962 F.2d 1209, 1213 (6th Cir. 1992) (Deputy Superintendent of Treatment held liable for failure to respond to complaints despite his knowledge of a breakdown in the medical system), *cert. denied*, 113 S.Ct. 2992 (1993); *Greason v. Kemp*, 891 F.2d 829, 8 (11th Cir. 1990) (prison system mental health director could be held liable for failure to remedy known deficiencies in mental health services); *LaFaut v. Smith*, 834 F.2d 38

PRISONERS' SELF-HELP LITIGATION MANUAL

their responsibilities to provide adequate medical care.²¹⁴

City or county governments may be held liable on a similar basis.²¹⁵ In your complaint and other papers, you should be specific about the reasons you think a particular defendant is liable for a medical care deprivation.

b. Remedies for Deliberate Indifference

Under the deliberate indifference standard, you may seek either an injunction requiring prison officials to give you proper medical care in the

392-94 (4th Cir. 1987) (damages awarded against warden who was "fully advised" of failure to provide a paraplegic inmate with adequate toilet facilities and rehabilitation therapy); *Thompkins v. Bell*, 828 F.2d 298, 305 (5th Cir. 1987) (Sheriff could be held liable if he knew the plaintiff's requests for medical treatment were being ignored); *Bass v. Lewis v. Wallenstein*, 769 F.2d at 1184-86 (assistant warden and medical administrator could be held liable for failure to act on previous warnings of inadequate medical care); *Langley v. Coughlin*, 715 F.Supp. at 544-49 (Commissioner, Superintendent, medical unit chief and security captain could be held liable based on their knowledge of deficiencies in mental health care); *Jones v. Evans*, 544 F.Supp. 769, 777 (N.D.Ga. 1982) (warden and commissioner could be held liable for inadequate training, supervision and direction of subordinate employees); *Tomarkin v. Ward*, 534 F.Supp. 1224, 1232 (S.D.N.Y. 1982) (warden could be responsible if he knew of denial of medical care in solitary confinement).

²¹⁴ *Howell v. Burden*, 12 F.3d 190, 192-94 (11th Cir. 1994) (Superintendent's "administrative authority" could support liability); *Johnson v. Lockhart*, 941 F.2d 705, 707 (8th Cir. 1991) ("Abdication of policy-making and oversight responsibilities can reach the level of deliberate indifference"; delays in prescribed surgery could support administrators' liability); *Al-Jundi v. Mancusi*, 926 F.2d 235, 239-40 (2d Cir. 1991) (Superintendent's failure to plan for medical care after violent suppression of prison disturbance would constitute deliberate indifference); *cert. denied*, 112 S.Ct. 182 (1991); *Meade v. Grubbs*, 841 F.2d at 1531 (the failure of the state health commissioner to carry out statutory duties could be deliberate indifference); *Brown v. Coughlin*, 758 F.Supp. 876, 889 (S.D.N.Y. 1991) (Commissioner and Superintendent have personal duties to ensure adequate medical services).

²¹⁵ *Colle v. Brazos County, Tex.*, 981 F.2d 237, 245 (5th Cir. 1993) (inadequate monitoring, lack of arrangements for transfers to medical facilities); *Cabrales v. County of Los Angeles*, 864 F.2d 1454, 1460-61 (9th Cir. 1988) (inadequate staffing); *wacated*, 490 U.S. 1091 (1990); 1087 (1989), *reinstated*, 886 F.2d 235 (9th Cir. 1989), *cert. denied*, 494 U.S. 1091 (1990); *Anderson v. City of Atlanta*, 778 F.2d at 685-89 (inadequate staffing); *Ancata v. Prison Health Services, Inc.*, 769 F.2d at 705-06 (policy of limited funding and requiring court orders for certain medical treatment); *Garcia v. Salt Lake County*, 768 F.2d 303, 307-08 (10th Cir. 1985) (inadequate staffing and policy of admitting unconscious persons to jail).

If local governments establish adequate procedures for providing medical care to prisoners, they can't be held liable based on isolated failures of their employees to follow them. *Holmes v. Sheahan*, 930 F.2d 1196, 1201-02 (7th Cir. 1991), *cert. denied*, 112 S.Ct. 423 (1991); *Bryant v. Maffucci*, 923 F.2d 979, 986 (2d Cir. 1991), *cert. denied*, 112 S.Ct. 152 (1991).

Municipal liability in civil rights actions requires proof that the violation was caused by a municipal policy. This requirement is discussed in Ch. VIII, § B.4.b. Similarly, a private corporation that provides prison medical care can only be held liable if the legal violation results from a corporate policy. See cases cited in § F of this chapter, n. 171.

PRISONERS' SELF-HELP LITIGATION MANUAL

future,²¹⁶ or damages for their past failure to provide proper care both.

The two don't always go together. A court may find that you are entitled to damages for what happened in the past, but you may be entitled to an injunction to avoid harm in the future.²¹⁸

Conversely, if you have received adequate care (or gotten well) by the time the court decides the case, you may not need an injunction but you can still receive damages for any pain and suffering you endured while waiting to receive proper treatment.²¹⁹

2. Serious Medical Needs

Under the Constitution, prison officials need provide care only for serious medical needs.²²⁰ Some courts have held that a medical need exists if it "has been diagnosed by a physician as mandating treatment or is so obvious that even a lay person would easily recognize the necessity for a doctor's attention."²²¹

²¹⁶ See, e.g., *Arnold* on behalf of H.B. v. Lewis, 803 F.Supp. 246, 258-57 (D.Ar. 1992); *Yarbaugh v. Roach*, 736 F.Supp. 318, 320 (D.D.C. 1990); *Phillips v. Michigan Corrections*, 731 F.Supp. 792, 800-01 (W.D.Mich. 1990), *aff'd*, 932 F.2d 969 (6th Cir. 1995). Prisoners may also seek injunctions against conditions that may cause illness in the future, such as exposure to infectious diseases or unsafe drinking water. *F. McKinney v. U.S.*, 113 S.Ct. 2475, 2480-81 (1993). Such conditions are covered further in § C.3.b of this chapter.

²¹⁷ See, e.g., *Aswegan v. Bruhl*, 965 F.2d 676, 677 (8th Cir. 1992); *Hill v. Marshall*, 1209 F.2d 1215-17 (6th Cir. 1992), *cert. denied*, 113 S.Ct. 2992 (1993); *Leach v. Shelby Sheriff*, 891 F.2d 1241 (6th Cir. 1989), *cert. denied*, 495 U.S. 932 (1990); *Mandel v. F.2d 783* (11th Cir. 1989). Other cases involving damage awards are cited throughout the following sections on medical care.

²¹⁸ *Johnson v. Bowers*, 884 F.2d 1053, 1056 (8th Cir. 1989); *Crooks v. Nix*, 872 F.2d 48 (2d Cir. 1989) (damage claim properly dismissed, but court should grant current medical records before ruling on injunctive claim); *compare Lee v. M. 543 F.Supp. 386, 391-93* (D.Kan. 1982) (granting injunction to paraplegic for further medical neglect) *with Lee v. McManus*, 589 F.Supp. 633, 638-41 (D.K. 1984) (denying damages based on various defenses).

²¹⁹ *Boretto v. Wisconsin*, 930 F.2d 1150, 1154-55 (6th Cir. 1991) (prisoner could get damages for failure to treat his wound even though it had healed); *Hathaway v. Coug. F.2d 48* (2d Cir. 1988) (claim for delay in surgery should not have been dismissed; the surgery was performed); *H.C. by Hewitt v. Jarrard*, 786 F.2d 1080, 1083, 1100 (1st Cir. 1986) (damages awarded for three-day denial of medical care with no physical injury resulting); *Robinson v. Moreland*, 655 F.2d 887, 890 (8th Cir. 1981); *West v. F.2d 158* (3d Cir. 1978) (similar to *Hathaway*); *Isaac v. Jones*, 529 F.Supp. (N.D.Ill. 1981).

²²⁰ *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S.Ct. 285 (1976). The seriousness of mental health needs is discussed in § F.4.a of this chapter. 279-80; see also cases cited in n. 294 concerning transsexualism.

²²¹ *Duran v. Anaya*, 642 F.Supp. 510, 524 (D.N.M. 1986); *accord, Johnson v. Busbee*, 349, 351 (8th Cir. 1991); *Gaudreault v. Municipality of Salem, Mass.*, 923 F.2d 1080, 1083 (1st Cir. 1990); *Monmouth County Correctional Institution Inmates v. Lanzaro*, 639 F.2d 559, 575 (10th Cir. 1980), *cert. denied*, 450 U.S. 981 (1981) and cases cited; *Maynard v. New Jersey*, 719 F.Supp. 292, 295 (D.N.J. 1987); *Henderson v. Harris*, 672 F.Supp. 1054, 1056, 1059 (N.D.Ill. 1987) (hemorrhoids); *McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th Cir. 1992) ("the existence of a

PRISONERS' SELF-HELP LITIGATION MANUAL

A medical condition may also be serious if it "significantly affects an individual's daily activities."²²²

A more general definition of serious medical needs, and we think a better one, refers to "conditions that cause pain, discomfort, or threat to good health."²²³ This definition is consistent with Supreme Court decisions holding that the Eighth Amendment prohibits the "unnecessary and wanton infliction of pain."²²⁴ Many courts have cited pain in finding a medical need serious.²²⁵ One court has stated, "Evidence of recent traumatic injury . . . has generally been sufficient to demonstrate a serious medical need."²²⁶

that a reasonable doctor or patient would find important and worthy of comment or treatment" supports a finding of seriousness); *Davis v. Jones*, 936 F.2d 971, 972 (7th Cir. 1991) (police are obligated to obtain medical care if an injury "reasonably appears to be serious"); *rehearing denied*, 946 F.2d 538 (7th Cir. 1991).

²²² *McGuckin v. Smith*, 974 F.2d at 1060; *accord*, *Tillery v. Owens*, 719 F.Supp. 1256, 1286 (W.D.Pa. 1989) (citing definition of "serious" mental illness as one "that has caused significant disruption in an inmate's everyday life and which prevents his functioning in the general population without disturbing or endangering others or himself"); *aff'd*, 907 F.2d 418 (3d Cir. 1990); *see Johnson v. Bowers*, 884 F.2d 1053, 1056 (8th Cir. 1989) (prison must treat a "substantial disability" -- in this case, partial disability of an arm); *Young v. Harris*, 509 F.Supp. 1111, 1113-14 (S.D.N.Y. 1981) (failure to provide leg brace was actionable); *see also* *Monmouth County Correctional Institution Inmates v. Lanzaro*, 834 F.2d at 347 (medical need is serious if it imposes a "life-long handicap or permanent loss").

²²³ *Dean v. Coughlin*, 623 F.Supp. 392, 404 (S.D.N.Y. 1985); *accord*, *McGuckin v. Smith*, 974 F.2d at 1060 ("chronic and substantial pain" indicates that a medical need is serious); *Boretti v. Wisconsin*, 930 F.2d 1150, 1154-55 (6th Cir. 1991) (needless pain is actionable even if there is no permanent injury); *Moreland v. Wharton*, 899 F.2d 1168, 1170 (11th Cir. 1990) ("significant and uncomfortable health problem" is actionable); *Johnson-El v. Schoemehl*, 878 F.2d 1043, 1055 (8th Cir. 1989) (condition that is "medically serious or painful in nature" may be actionable); *Farinero v. Coughlin*, 642 F.Supp. 276, 279 (S.D.N.Y. 1986) (Eighth Amendment requires "a specific showing of pain, discomfort, or threat to health").

²²⁴ *Estelle v. Gamble*, 429 U.S. at 104.

²²⁵ *Ellis v. Butler*, 890 F.2d 1001, 1003 (8th Cir. 1989) (swollen, painful knee must be considered "serious" on a motion to dismiss); *Washington v. Dugger*, 860 F.2d 1018, 1021 (11th Cir. 1988) (plaintiff was denied treatments that "eliminated pain and suffering at least temporarily"); *West v. Keve*, 571 F.2d 158, 161-62 (3d Cir. 1978) (pain while awaiting a delayed operation); *Kaminsky v. Rosenblum*, 737 F.Supp. 1309, 1319 (S.D.N.Y. 1990) ("unnecessary pain and suffering"); *appeal dismissed*, 929 F.2d 922 (2d Cir. 1991); *Bouchard v. Magnusson*, 715 F.Supp. 1146, 1148 (D.Me. 1989) (persistent back pain is serious); *Young v. Harris*, 509 F.Supp. at 1113 (plaintiff could not walk without "substantial difficulty and discomfort"); *see Case v. Bixler*, 518 F.Supp. 1277, 1280 (S.D. Ohio 1981) (boil "in full flower" might be serious). *But see Wilson v. Franchesci*, 735 F.Supp. 395, 398 (M.D.Fla. 1990) (itching is not a serious medical need). *Compare Harris v. Murray*, 761 F.Supp. 409, 414 (E.D.Va. 1990) (hair loss is not serious) with *Johnson-El v. District of Columbia*, 579 A.2d 163, 167-69 (D.C. 1990) (hair loss is serious; dermatological problem of scalp cited).

²²⁶ *Brown v. Hughes*, 894 F.2d 1533, 1538 n. 4 (11th Cir. 1990), *cert. denied*, 110 S.Ct. 2624 (1990); *see Smallwood v. Renfro*, 708 F.Supp. 182, 187 (N.D.Ill. 1989) (cut lip might be serious).

Several courts have held that such injuries were not serious. *Caudreault v. Municipality of Salem, Mass.*, 923 F.2d at 208; *Williams-El v. Johnson*, 872 F.2d 224, 230-31 (8th Cir. 1989), *cert. denied*, 493 U.S. 871 (1989); *Wesson v. Oglesby*, 910 F.2d 278, 284 (5th Cir. 1990); *Martin v. Gentile*, 849 F.2d 863, 871 (4th Cir. 1988) (cut over eye and

PRISONERS' SELF-HELP LITIGATION MANUAL

Courts have recognized that "there can be a serious cumulative from the repeated denial of care with regard to even minor need. Thus, even a bad headache might not be serious by itself, but if you them continually, we think you have a serious medical need. The fact certain care has been labelled "elective" does not necessarily mean your need for it is not serious."²²⁸

In drafting a complaint or other court papers, you should address issue of "seriousness" by being very specific about the effects of the of medical care.²²⁹ This point is especially important since one if court has held that if the seriousness of a medical need is not "appar a lay person," the plaintiff must submit expert medical evidence -- a possible task for most *pro se* litigants.²³⁰

You should therefore do what you can to make the seriousness of need "apparent" to the court by explaining how painful it is, to what it interferes with your activities, how long you have had it, what is getting worse, etc. You may also wish to ask the court to appoint medical expert witness under Rule 706, Fed.R.Ev. This is a long shot cause there is no provision to pay expert witnesses in civil *in forma peris* cases,²³¹ but in a serious case the court may be able to persuade expert to donate her services. A Rule 706 expert has been appointed least one prison medical case.²³²

piece of glass in hand were not so serious that a 14-hour delay in treating the unconstitutional). In these cases, the plaintiff received some treatment, and it issue seems to be that the treatment was not constitutionally inadequate.

²²⁷ *Jones v. Evans*, 544 F.Supp. 769, 775 n. 4 (N.D.Ga. 1982).

²²⁸ *Johnson v. Bowers*, 884 F.2d at 1056; *Monmouth County Correctional Institutionates v. Lanzaro*, 834 F.2d 326, 349 (3d Cir. 1987), *cert. denied*, 486 U.S. 1066 (Delker v. Maass, 843 F. Supp. 1390, 1399-1400 (D.Or. 1994). *But see* *Bor Kozakiewicz*, 833 F.2d 468, 473 (3d Cir. 1987) ("elective" surgery could be deferred "presumably brief" period of pre-trial detention), *cert. denied*, 485 U.S. 991 (1988).

²²⁹ The failure to provide this kind of information can lead to the dismissal of you *See Givens v. Jones*, 900 F.2d 1229, 1233 (8th Cir. 1990) (claim of delay in treatment dismissed where the prisoner did not allege "that his condition was acute any other reason required immediate attention nor that the [one-month] treatment aggravated his condition"; *Dixon v. Fox*, 893 F.2d 1556, 1557 (8th Cir. claim of suspension of medical diet dismissed where plaintiffs did not explain their serious medical needs were compromised), *cert. denied*, 112 S.Ct. 262 (Stinson v. Sheriff's Dept. of Sullivan County, 499 F.Supp. 259, 263 (S.D.N.Y. "bruises and lacerations" were serious; vague claims of head pain and pain suffering from unspecified "eye injury" were not).

²³⁰ *Boring v. Kozakiewicz*, 833 F.2d at 473-74. The dissenting judge in that case "The inhumanity of this paradoxical rule of law alone suggests a serious flaw." 474. We agree.

²³¹ *Boring v. Kozakiewicz*, 833 F.2d at 473-74.

²³² *Crabtree v. Collins*, 900 F.2d 79, 81 (6th Cir. 1990); *see also* *Smith v. Jenkins*, 919 F. 94 (8th Cir. 1990) (suggesting that the district court "may" appoint an independent expert or obtain an opinion from the doctor who treated the plaintiff before imprisonment). *See* Ch. IX, § S.1.e for further discussion of expert witnesses.

The need for expert testimony is also a factor that weighs in favor of appeal

PRISONERS' SELF-HELP LITIGATION MANUAL

fashion that permits prisoners' complaints to be evaluated in a professional manner.²³⁷ Correctional personnel without medical training used to convey sick call requests²³⁸ but they cannot be allowed which prisoners will receive medical attention.²³⁹

Prisons may use nurses, physicians' assistants or medical technicians to determine priorities in seeing a doctor and to have problems for which a doctor is not necessary.²⁴⁰

However, in such a system, the person doing the screening must have adequate training and physician supervision, and prisoners with physician's direct attention must receive it.²⁴¹

(D.Or. 1990) (segregation inmates could not be locked into cells from which not summon assistance); *united and remanded*, 12 F.3d 1444 (9th Cir. 1993). court in *LeMaire* did not disagree with the district court's finding of unconstitutional but merely held that its injunction was too broad.

²³⁷ Hoptowit v. Ray, 682 F.2d at 1252-53 (9th Cir. 1982) (evaluation of medical complaints via written "kites" rather than examination of the patient was inadequate); *Todaro v. Ward*, 565 F.2d at 50-51 (nurse screening procedure that allowed seconds per prisoner, did not permit physical examination, and assign based on "cryptic" written notes was inadequate); *Tillery v. Owens*, 719 F.2d 1306 (W.D.Pa. 1989) (" cursory" sick call and sick call conducted where the prevented the doctor from hearing complaints were inadequate); *aff'd*, 907 F.2d 1306 (3d Cir. 1990); *United States v. State of Michigan*, 680 F.Supp. 928, 1043-45, 1061 (E.D.Mich. 1987) (decisions about medical priorities cannot be made from the inmate complaint without an examination; court later accepts a written complaint requires all prisoners with non-routine complaints to be seen by a doctor within 24 hours).

²³⁸ *Miller v. Carson*, 401 F.Supp. 835, 898 (M.D.Fla. 1975), *aff'd in pertinent part*, 519 F.2d 1183 (5th Cir.), *rehearing denied*, 566 F.2d 106 (5th Cir. 1977).

²³⁹ *Fields v. City of South Houston, Texas*, 922 F.2d 1183, 1192 n.10 (5th Cir. 1991) (lay personnel supported a claim of deliberate indifference); *Kelley v. McFadden*, 612 F.2d 616 (7th Cir. 1990) (allegation that non-medical personnel initiated access to a doctor stated a deliberate indifference claim); *Boswell v. Sherburne*, 849 F.2d 1117, 1123 (10th Cir. 1988) (deliberate indifference claim was supported by evidence that "inadequately trained jailers were directed to use their own judgment about the seriousness of prisoners' medical needs"); *cert. denied*, 488 U.S. 1017 (1988). *Hoptowit v. Ray*, 682 F.2d at 1252; *Morales Feliciano v. Hernandez Colon*, 37, 41, 50 (D.P.R. 1988); *Martino v. Carey*, 563 F.Supp. 984, 989-90, 997-98 (D.P.R. 1987). *Partee v. Lane*, 528 F.Supp. 1254, 1259-61 (N.D.Ill. 1981); *Burks v. Teasdale*, 650, 678-79 (W.D.Mo. 1980); *see Toussaint v. McCarthy*, 801 F.2d 1080, 1111 (1st Cir. 1986) (court should determine what services were performed by assistants, inmates and whether they were qualified to perform them), *cert. denied*, 488 U.S. 1017 (1988).

²⁴⁰ *See* cases cited in § F.4.c of this chapter, nn. 251 and 253.

PRISONERS' SELF-HELP LITIGATION MANUAL

3. The Medical Care System

In order to provide adequate medical care, prison officials must have an adequate system for identifying prisoners with medical needs and making sure that they are diagnosed and treated. "[S]ystemic deficiencies in staffing, facilities, or procedures [which] make unnecessary suffering inevitable" constitute deliberate indifference.²³³

In the next several sections, we will discuss what prison officials must do to meet their obligation to provide "a medical care system that meets minimal standards of adequacy."²³⁴

a. Communication of Medical Needs

"Prison officials show deliberate indifference to serious medical needs if prisoners are unable to make their medical problems known to the medical staff."²³⁵ Prisoners in isolated confinement must be able to communicate their medical needs to staff.²³⁶ Sick call must be conducted in a

counsel to represent you, and you should point this out in your motion for the appointment of counsel. *See* Ch. IX, § C.5, concerning appointment of counsel.

²³³ *Todaro v. Ward*, 565 F.2d 48, 52 (2d Cir. 1977), *quoting* *Bishop v. Stoneman*, 508 F.2d 1224, 1226 (2d Cir. 1974); *accord*, *Harris v. Thigpen*, 941 F.2d 1495, 1505 (11th Cir. 1991); *DeGidio v. Pung*, 920 F.2d 525, 529 (8th Cir. 1990) (lack of "adequate organization and control in the administration of health services" supported finding of Eighth Amendment violation); *Free v. Granger*, 887 F.2d 1552, 1556 (11th Cir. 1989) ("Proof of staffing or procedural deficiencies may give rise to a finding of 'deliberate indifference'"); *Eng v. Smith*, 849 F.2d 80, 82 (2d Cir. 1988) (evidence of "systemic deficiencies" in mental health care supported a preliminary injunction); *Greason v. Kemp*, 891 F.2d 829, 839 (11th Cir. 1990) (state prison mental health director could be held liable for lack of mental health treatment plans, lack of policies and procedures for suicide prevention and inadequate psychiatric staff leading to inmate suicide); *French v. Owens*, 777 F.2d 1250, 1254 (7th Cir. 1985), *cert. denied*, 479 U.S. 817 (1986); *Ramos v. Lamun*, 639 F.2d 559, 575 (10th Cir. 1980), *cert. denied*, 450 U.S. 1041 (1981); *Newman v. Alabama*, 503 F.2d 1320, 1331 (5th Cir. 1974) ("disorganized lines of therapeutic responsibility" contributed to an Eighth Amendment violation); *Tillery v. Owens*, 719 F.Supp. 1256, 1305-06 (W.D.Pa. 1989) (lack of proper administration of medical services and "general disorganization" of nursing services contributed to an Eighth Amendment violation); *aff'd*, 907 F.2d 418 (3d Cir. 1990); *Inmates of Occoquan v. Barry*, 717 F.Supp. 854, 867 (D.D.C. 1989) (lack of a follow-up system for treating chronic diseases cited as part of an Eighth Amendment and administration of health care generally found inadequate); *see also* cases cited in § F.1.b of this chapter, nn. 211-216.

²³⁴ *Wellman v. Faulkner*, 715 F.2d 269, 271 (7th Cir. 1983), *cert. denied*, 468 U.S. 1217 (1984). *Hoptowit v. Ray*, 682 F.2d 1237, 1253 (9th Cir. 1982); *accord*, *Johnson-El v. Schoemehl*, 878 F.2d 1043, 1054-55 (8th Cir. 1989) (sick call only once a week stated a constitutional claim); *Bass by Lewis v. Wallenstein*, 769 F.2d 1173, 1184-85 (7th Cir. 1985) (known deficiencies in sick call system supported a finding of deliberate indifference); *Arnold on behalf of H.B. v. Lewis*, 803 F.Supp. 246, 257 (D.Ariz. 1992) (lack of adequate system of psychiatric referrals supported a finding of deliberate indifference); *Morales Feliciano v. Hernandez Colon*, 697 F.Supp. 37, 41, 50 (D.P.R. 1988); *Dawson v. Kendrick*, 527 F.Supp. 1252, 1308 (D.W.Va. 1981); *Lightfoot v. Walker*, 486 F.Supp. 504, 516-17 (S.D.Ill. 1980); *see Wright v. Jones*, 907 F.2d 888, 852 (8th Cir. 1990) (supervisory officials were not liable for denial of treatment where they had instituted policies and procedures for communication of medical requests).

²³⁵ *Todaro v. Ward*, 565 F.2d 48, 51-52 (2d Cir. 1977) (infirm patients in isolation rooms must be provided a way to summon nurses); *LeMaire v. Maass*, 745 F.Supp. 623, 636

(1)

To whom it may concern

Enclosed are issues and documentation when my son was incarcerated at Gender Hill Prison.
(Born and suffering due to hernia)

① Letter mailed to me after my conversations with Gregory Smith (Deputy Attorney General). The letter states my son was housed in infirmary. Not so at the time.

② Second letter sent to Senator Biden's office, from Warden after I gave Senator Biden spokesperson - Leon Butler, my documentation of my sons complaints.

③ Documentation of my sons complaints to me.

①

6/24/02

C

I am addressing concerns to Senator Biden's office, that my son has given to me. He is a inmate at Vander Hill Prison. His name is William F. Davis III
S.B.I # 162762

5/22

9:19
PM.

Son called from Vander Hill % severe pain
(pay phone # 426-9321)

I put in a call to Gov Minner's answering service, operator took my name and phone number, stated Matt was spokesperson,

No response from Matt

5/23 Son called and stated given

→ Tylenol

6/2

8:55
P.M.

Son again % pain

6/3

9:08
AM

Call put into Jean Long (medical supervisor)
No response

6/4 Son again % pain. States he can hardly move, the appetite

02

2

6/4 cont'd

→ States given 600 mgms Motrin
 6/6 Placed a call to main ~~prison~~
 prison number (no response)
 6/7 Called main number
 again (no response)

Placed a call to Governor's
 office (Wilmington) spoke to
 John Henry. Stated my
 concerns to him. Did not
 call me back

10³⁰_{AM} Son called to state he is
 in infirmary, to be X-rayed

6/10 1¹⁹_{P.M.} Son called and stated
 X-rays were taken, but no one
 has communicated with him.

I spoke to Jean Long (1³⁰_{P.M.})
 Hesitant to speak to me. Stated
 I don't know who you are.
 I informed her firmly, I
 was his mother.

6⁴⁵_{P.M.} Son % pain

6/12. Son still in infirmary.
 I call Rick Brown (internal
 affairs) Addressed my concern

(62)

6/12 (cont'd)

to him. He returned back to me and stated mostly dealing with a intestinal problem (according to the doctor)

6/13 Spoke to Prison Comm's secretary States will check into situation! (Did not call me back)

6/14 Son continues to go gain States he can hardly walk, very little appetite. Was told he will get another x-ray

6/15 Go gain

6/16 C/o feeling weak, no appetite, nauseated, throwing up.

6/16 I left a message on voice mail of Ab. Governor's office (Dover)

6/17 Call came from Ab. Governor's ^{2:26 PM} office. (message left) stating they had received my message ^(5:17 PM) and would get back to me ^(3:01 PM)

6/17 Son states needs are being ignored. Stated a Nurse Betty stated to him "You're not going to the hospital, it's not your hernia, it's a obstruction of the bowels"

6/18 Called Senator Biden's office

6/18 Diane Butler returned my call. Stated medical unit states not constipated, bowels moving okay, hernia is small, blood work done, x ray done, no infection (according to my son he weighed himself when first placed in infirmary (22.5 lbs))

cont'd conversation with Diane Butler stated Medical staff feels he wants to stay in infirmary. Not eating his special diet, Eating what he is not supposed to eat (Note: If he is on a special diet, how is he getting things to eat he is not supposed to have?)

6/19 Son states went to bathroom and passed a lot of waste (Stated by staff bowels were okay on 6/18)

6/20 Son states still having pain, but stated to be placed back on pad.

→ 6/21 Son placed back on food.
 States he is still in ~~pain~~
 I call Comm. office again.
 Told to call Cathy English.
 I did not place call.

6/23 Son continues to ~~C/O~~ pain and
 not having a appetite

6/25 12³⁴_{P.M.} Son continues to ~~C/O~~ pain.

→ States lost 20 lbs.

6/26 Son continues to ~~C/O~~ pain,

→ No appetite, weak, cannot
 hardly move, nauseated,
 stating he's tired of being sick,

→ I feel like crying

6/27 Called Biden's Office
 (no response)

6/28 ~~C/O~~ pain

→ 7/7 Son still ~~C/O~~ pain, ~~nausea~~,
~~no~~ appetite, states he's getting
 weak, given no pain medication
~~C/O~~ cramps

7/8 Called att. General's Office (Wilms)
 Spoke to Gregory Smith

I gave him my concerns
 about my son. After
 listening to my concerns

7/8 cont'd

Mr. Smith stated. How do you think families feel who have crimes committed against them? I could not understand why he made the statement to me when it had nothing to do with my son's issues.

7/8 Son called and stated he was to have more blood work done.

States went from 250-232 (lbs)

7/9 Son continues to have no appetite
States nobody cares about his
problem ~~repeating~~ over and over,

7/10 Senator Biden's spokesperson

Diane Butler suggested a I make a visit to see weight loss.

8/5 Spoke to Linda Hunter (medical)
stated being taken care of

7/29 Son states continued pain
I glenol 3 not helping

8/16/ Called Senator Margaret Henry.
Gave my concerns to her
called me back and stated

(12)

C

(7)

8/16 cont'd

She spoke to the Warden
and stated he was to see
a surgeon

Surgery performed on
9/5 (Dr. Hammer)

It seems as the nothing
would have been done for
my son, if I had not
communicated with Senator
Henry. According to my son

→ the doctor stated he could have
died from the bacteria in
his feces if treatment
was put off much longer.

9/13 Spoke to Linda Hunter (Medical
11/26 AM Stated. He is doing better
than last week.

Lois E. Davis
102 Se. Skald St.
Wilms De. 19801
(302)-777-7558

KPAJ

Discharge Summary (1)

▶ FINAL DIAGNOSES:

1. Perforation of the small bowel with extensive peritonitis.
2. Incarcerated ventral hernia.

▶ SECONDARY DIAGNOSES: Protein calorie malnutrition and postoperative ileus.

OPERATIVE PROCEDURE: Exploratory laparotomy with small bowel resection and anastomosis, peritoneal debridement and toilet, repair of incarcerated ventral incisional hernia by Dr. Mammen on 9/5/02.

BRIEF HISTORY AND PHYSICAL FINDINGS: This 41-year-old patient presented with a four month history of pain in the umbilical area. He was noted to have a hernia approximately four months ago in that area. This was originally reducible, but then became irreducible. He has had intermittent vomiting and abdominal pains for the past three months and has apparently lost about 40 pounds of weight. There was a CT scan done approximately a month ago that showed near total obstruction of the small bowel. Physical examination when he came to the office revealed a sick looking male with a pulse of 110 per minute, blood pressure 120/90 mmHg. Abdomen was moderately distended with a 10 cm x 10 cm periumbilical swelling with marked tenderness, guarding and percussion tenderness of the abdomen. The picture was that of an incarcerated ventral hernia with intestinal obstruction and signs of peritonitis.

▶ He was admitted emergently from the office to St. Francis Hospital and emergently underwent abdominal exploration. There was evidence of long standing small bowel obstruction around the jejunal ileal junction with a perforation possibly from a Richter's hernia. There was massive fecal peritonitis with small bowel contents all through the abdomen. These were multiloculated over the lower spleen, pericolic gutters and the pelvis. The entire peritoneal surface was covered with purulent exudate indicating perforation had occurred quite some time before the exploration. The segment of small bowel with the perforation was resection and staple anastomosis created. Extensive peritoneal toilet and debridement of as much of the exudate as possible was carried out. All of the loculated interloop collections were drained. He did have a hernia, but the hernia had only preperitoneal fat at the time of surgery because the bowel that was trapped in slipped back after it perforated and decompressed itself. The skin incision was left open except for a few sutures to hold the umbilical area skin together.

Catholic Health East	Pt. name: DAVIS, WILLIAM F III
ST. FRANCIS HEALTHCARE SERVICES	Medical Record #: W0909564
<u>DISCHARGE SUMMARY</u>	Admission Date: 09/05/02 Acct#: W004170064
(1010-0060)	Consultant: Mammen, Thomas K. M.D.
	D/C Date: 09/14/02 Rm: W734-2
	Pt. Status: DIS IN Pt. Loc.: W7N

000082

Operative Report (1)

► PREOPERATIVE DIAGNOSIS: Incarcerated ventral hernia with signs of intestinal obstruction and peritonitis.

POSTOPERATIVE DIAGNOSIS: Incarcerated ventral hernia with question of small bowel perforation and massive fecal peritonitis.

OPERATIVE PROCEDURE: Exploratory laparotomy and small bowel resection with anastomosis, peritoneal debridement and tiolette repair of incarcerated ventral hernia.

SURGEON: THOMAS MAMMEN, M.D.

INDICATION FOR SURGERY: This 41-year-old patient apparently had a 3 month history of progressive weight loss, intermittent nausea and vomiting and progressive abdominal distention. This became worse over the last several weeks. He had lost about 30 to 40 pounds over the past 3 to 4 months. CT scan of the abdomen done approximately a month ago at St. Francis Hospital revealed near total small bowel obstruction. The patient when seen the office had an incarcerated tender hernia with signs of peritonitis. The patient emergently brought to the Operating Room for exploration.

► OPERATIVE FINDINGS: The patient had evidence of long-standing small bowel obstruction at around the jejunoileal junction with a perforation at that point possibly from a Richter's hernia. The proximal bowel was hypertrophic and distended and the distal bowel was collapsed. There was massive fecal peritonitis with small bowel fluid free and loculated around the liver, spleen, pericolic gutters, pelvis and within multiple loops of small bowel. The entire peritoneal surface was covered with brownish/yellow exudates indicating the peritonitis had been present for quite some time.

OPERATIVE PROCEDURE: Under endotracheal general anesthesia, the abdomen was prepared with Betadine and draped. An incision was made from the mid epigastric area down to the pubic area around the umbilicus. The incision was deepened through the subcutaneous tissue. The hernia defect was identified but when opened had only preperitoneal fat within it. When the peritoneum was opened, it was quite evident that the patient had had a perforation that occurred some time ago with massive fecal peritonitis. The portion of the small bowel that had the perforation was identified and the leaking hole was occluded with a single suture of 3-0 silk. After this was done, all of the collections from the peritoneal cavity was drained. As much of the peritoneal surfaces that could be debrided without causing extensive damage were debrided off of the brownish/yellow exudate that covered all the

Catholic Health East	Pt. name: DAVIS, WILLIAM F III
ST. FRANCIS HEALTHCARE SERVICES	Medical Record #: W0909564
OPERATIVE REPORT	Account#: W004170064 Proc. Date: 09/05/02
(1010-0022)	Admission Date: 09/05/02
	Surgeon: Mammen, Thomas K. M.D
	D/C Date: 09/14/02 Pt. Loc.: W7N

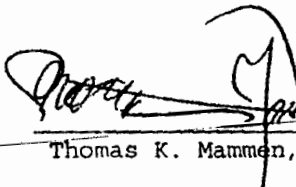
000092

peritoneal surfaces. The subdiaphragmatic area, the surface of the liver, the Morrison's pouch, the pericolic gutters and the surface of the spleen were drained of pus and fluid collection. Copious irrigation was carried out to remove as much of the small bowel contents that had spilled as possible. A portion of the small

bowel was resected using a GIA stapling device and a stapled functional end-to-end anastomosis was created. The opening created made to insert the GIA stapling instrument was a TA stapling device. Several sutures of 3-0 silk were placed where the bowel was put together to prevent the distraction of the anastomosed bowel. The opening in the mesentery was approximated with several 3-0 silk sutures. The peritoneal cavity was irrigated once again. The fascia was now approximated using looped #1 PDS suture with single interrupted #1 PDS suture in between. The looped PDS sutures started from the superior portion of the wound and another one from the inferior portion of the wound, met in the middle and were tied to each other. Several 3-0 nylon sutures were placed in the skin and subcutaneous tissue to loosely approximate the skin in three locations. The wound was covered with Adaptic and gauze dressings. The blood loss during the procedure was 100 to 150 mL. The patient tolerated the procedure well and was transferred to the Intensive Care Unit postoperatively.

DD: 10/09/2002 TD: 10/09/2002
Job: 58682 TM/TL373

CC: THOMAS MAMMEN, M.D. (faxed)


Thomas K. Mammen, M.D.

Catholic Health East	Pt. name: DAVIS, WILLIAM F III
ST. FRANCIS HEALTHCARE SERVICES	Medical Record #: W0909564
<u>OPERATIVE REPORT</u> (1010-0022)	Account#: W004170064 Proc. Date: 09/05/02
	Admission Date: 09/05/02
	Surgeon: Mammen, Thomas K. M.D
	D/C Date: 09/14/02 Pt. Loc.: W7N

000093


The patient was initially managed in the Intensive Care Unit and massive fluid infusion had to be carried out because the patient had had chronic dehydration. He was started on TPN by 9/7/02 because the patient had lost 30 to 40 pounds of weight during the previous three months and was in protein calorie malnutrition. He had a prolonged ileus. He was subsequently transferred out of the ICU and was nursed on the regular floor with IV fluids and IV antibiotics and nasogastric suction.

The nasogastric tube was removed on 9/10/02 - the fifth postoperative day and he was started on clear liquids. He did have some urinary problems with voiding. He was started on Flomax prn and Foley catheterization. The medical care and the TPN was managed by Dr. Brus. The diet was slowly advanced to a regular diet and the TPN was tapered off. He was discharged back to the prison on 9/14. At the time of discharge, he was tolerating a regular diet, receiving pain relief with oral agents and the patient appeared to be slowly healing.

He was discharged with instructions to continue Cipro and Flagyl for four more days after discharge. Wound care instructions were given. He will be returned to the office for a follow up examination in two week's time.

DD: 10/09/2002 TD: 10/10/2002
Job: 58671 TM/TL468

CC: THOMAS MAMMEN, M.D. (faxed)


Thomas K. Mammen, M.D.

Catholic Health East	Pt. name: DAVIS, WILLIAM F III
ST. FRANCIS HEALTHCARE SERVICES	Medical Record #: W0909564
<u>DISCHARGE SUMMARY</u> (1010-0060)	Admission Date: 09/05/02 Acct#: W004170064
	Consultant: Mammen, Thomas K. M.D.
	D/C Date: 09/14/02 Rm: W734-2
	Pt. Status: DIS IN Pt. Loc.: W7N

000083

St. Francis Hospital
Wilmington, DE. 19805

9/14

SURGICAL PATHOLOGY REPORT

PATIENT: DAVIS, WILLIAM F

DATE: 09/08/2002

PATH #: 028-4024

BIRTHDATE: 11/07/1960

AGE/SEX: 41Y M

LOCATION: 3ICU 10

ATTENDING PHYS.: MAMMEN, THOMAS

ACCT. NO.: W004170064

ORDERING PHYS.: MAMMEN, THOMAS

MED REC #: W0909564

COPIES TO: CHART COPY

CLINICAL DATA: "ONE WEEK HISTORY OF PROGRESSIVELY WORSENING ABDOMINAL PAIN.

DOMINATED SMALL BOWEL OBSTRUCTION ONE MONTH AGO. AT SURGERY PERFORATED

SMALL BOWEL WITH EXTENSIVE PERITONITIS".

SURGICAL PROCEDURE: SEGMENTAL RESECTION

SPECIMEN: SMALL BOWEL

DIAGNOSIS: SMALL BOWEL, SEGMENTAL RESECTION:

- SMALL BOWEL SEGMENT WITH CHANGES CONSISTENT WITH ISCHEMIA.
- SEROSAL SURFACE WITH SEVERE ACUTE SEROSITIS/PERITONITIS.
- ABSCESS WITHIN FATTY TISSUE.

Service Codes: 8807

Gross Description: Received in formalin and designated "small bowel" are two separate fragments of tissue: a segment of small bowel (8 cm. length x 4 cm. diameter) and a separate fragment of fibrofatty tissue (10 x 6 x 2 cm.). The surface of the small bowel exhibits extensive purulent exudate over approximately 50% of the surface. The remaining surfaces are purple and beefy red. The small bowel wall measures 0.8 cm. in maximal thickness. The mucosa exhibits a crisscross shaped pattern of erythema and apparent ulceration. No polypoid lesions are noted. The fragment of fibroadipose tissue exhibits a focal peritonealized surface with erythema. Representative sections are submitted. SNK/amb

KEY:

A-E: cross sections through small bowel

F: cross sections through fatty tissue

ELECTRONIC SIGNATURE: SOPHIA N. KOTLIAR, M.D.

Date Finalled: 09/12/2002

CHART COPY

PRINTED: 09/13/2002 TIME: 0744
PAGE: 1

000091

Attach a copy to bill and mail to:
 First Correctional Medical
 Attn. Heather Norris
 P.O. Box 69370
 Tucson, AZ 85737-0015

F FIRST
 C CORRECTIONAL
 M MEDICAL

CONSULTATION REQUEST

Facility: Granada Clinic

William Davis
 Name of Inmate

9/5/02
 Date of Request

0162762 11/07/60
 Inmate ID # Date of Birth

G. Roach M.D.
 Provider's Name (Please Print)

REASON FOR REFERRAL

Pertinent history & physical finding(s) (please Print)

4 y/o left side of Lsp ventral hernia
dropped after peritonally smooth - 7 pm
in hernia

Urgency of consult (please circle one)

emergency
 (going out now)

urgent
 (1-2 weeks)

routine
 (3-12 weeks)

standard
 (13 wk-6 months)

Consult or test(s) requested:

Reduction of Ventral Hernia

Estimated cost of consult/test(s):

FCM Approved:

(SIGNATURE)

Date:

9/5/02

FCM Denied:

(SIGNATURE)

Date:

Contract Approved:

(SIGNATURE)

Date:

Contract Denied:

(SIGNATURE)

Date:

Consult Provider Name and Address:

000089

Scheduled date/time of appt:

Authorization #:

Per request sent
Prisoner consult

WM: William F. Davis III
SBI# 62762 UNIT 72
DELAWARE CORRECTIONAL CENTER
1181 PADDOCK ROAD
SMYRNA, DELAWARE 19977

Office of the Clerk
United States District Court
844 N. King Street, 6th Floor
Wilmington, DE 19801-3570

